The Commonwealth of Massachusetts

DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES

Navjeet K. Bal, *Commissioner*
Robert G. Nunes, *Deputy Commissioner*

MUNICIPAL BULLETIN NO. 37

LAWS RELATING TO MUNICIPAL FINANCE AND TAXATION

REPRINTED FROM
MASSACHUSETTS GENERAL LAWS ANNOTATED AND THE
ACTS AND RESOLVES OF MASSACHUSETTS

May, 2011

Massachusetts Department of Revenue *Division of Local Services*
Navjeet K. Bal, Commissioner *Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs*

May 2011

Dear Government Officials:

The Division of Local Services (DLS) is pleased to announce that it is providing state and local officials with copies of our updated *Municipal Bulletin 37*, "*Laws Relating to Municipal Finance and Taxation.*" This publication is a compilation of those sections of the Massachusetts General Laws and Acts and Resolves that are of particular relevance to local government. *Bulletin 37* is an update to *Bulletin 36* and has been updated through May 2011.

The Division has also updated its supplemental document, a Legal Index for Municipal Officers, which is available on the DLS website at www.mass.gov/dls under Publications. This user-friendly index is designed to enable local officials to quickly locate topics and the relevant statutes that commonly pertain to municipalities.

For your convenience, additional copies of *Bulletin 37* are available for purchase from the State House Bookstore (617-727-2834).

Thank you for your continued support.

Sincerely,

Robert G. Nunes

Robert G. Nunes
Deputy Commissioner

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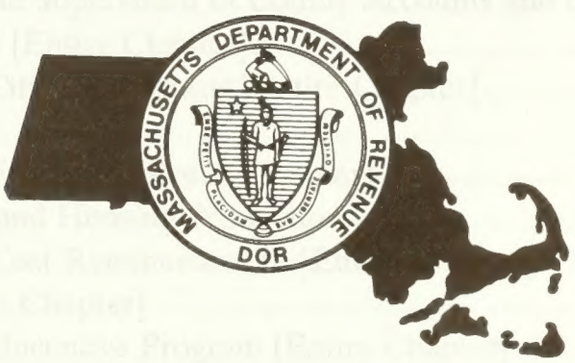

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PREFACE

THE DEPARTMENT OF REVENUE, DIVISION OF LOCAL SERVICES

This edition of "Laws Relating to Municipal Finance and Taxation" was compiled by the Department of Revenue's Division of Local Services. The Division of Local Services provides technical assistance and advice to municipal officials on a broad range of topics concerning local finance and taxation, as well as exercising supervisory and regulatory functions under various statutory provisions.

Deputy Commissioner Robert G. Nunes

(617) 626–2381

Bureau of Accounts: Certifies tax rates for the cities and towns and carries a prime responsibility under Proposition 2 ½ for assuring compliance with property tax levy limits. Supervises, assists and monitors the financial management and accounting practices of cities, towns, counties and special districts. **Director: Gerald D. Perry, (617) 626–2134.**

Bureau of Local Assessment: Supervises property valuation and assessment with the goal of ensuring fair and uniform property taxes. Also oversees implementation of the Classification Amendment. **Chief: Marilyn Browne, (617) 626–2334.**

Municipal Data Management and Technical Assistance Bureau: Responsible for local aid distribution, the Municipal Data Bank and coordination of technical assistance and management consulting reviews for communities. **Chief: Frederick Kingsley, (617) 626–2376.**

Bureau of Municipal Finance Law: Answers legal questions regarding municipal finance and taxation. Provides advice and assistance to the Bureaus and Deputy Commissioner and reviews and approves interpretations of the law and policy. **Chief: Kathleen Colleary, Esq., (617) 626–2400.**

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PART I

EXTRACTS FROM THE MASSACHUSETTS CONSTITUTION

ARTICLES OF AMENDMENT

Section
Art. II, § 1. Home Rule for Cities and Towns; Right of Local Self-Government.
Art. II, § 2. Local Power to Adopt, Revise or Amend Charters.
Art. II, § 3. Procedure for Adoption or Revision of a Charter by a City or Town.
Art. II, § 4. Procedure for Amendment of a Charter by a City or Town.
Art. II, § 5. Recording of Charters and Charter Amendments.
Art. II, § 6. Governmental Powers of Cities and Towns.
Art. II, § 7. Limitations on Local Powers.
Art. II, § 8. Powers of the General Court.
Art. II, § 9. Existing Special Laws.
Art. XVIII. Free exercise of religion; support of public schools; use of public money or credit for schools and institutions.

Art. II. Power of general court to erect and constitute municipal or city governments; by-laws; establishment of limited town meeting form of government in certain towns

Section 1. Home Rule for Cities and Towns; Right of Local Self-Government

It is the intention of this article to reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government, and to grant and confirm to the people of every city and town the right of self-government in local matters, subject to the provisions of this article and to such standards and requirements as the general court may establish by law in accordance with the provisions of this article.

Section 2. Local Power to Adopt, Revise or Amend Charters

Any city or town shall have the power to adopt or revise a charter or to amend its existing charter through the procedures set forth in sections three and four. The provisions of any adopted or revised charter or any charter amendment shall not be inconsistent with the constitution or any laws enacted by the general court in conformity with the powers reserved to the general court by section eight.

No town of fewer than twelve thousand inhabitants shall adopt a city form of government, and no town of fewer than six thousand inhabitants shall adopt a form of government providing for a town meeting limited to such inhabitants of the town as may be elected to meet, deliberate, act and vote in the exercise of the corporate powers of the town.

Section 3. Procedure for Adoption or Revision of a Charter by a City or Town

Every city and town shall have the power to adopt or revise a charter in the following manner: A petition for the adoption or revision of a charter shall be signed by at least fifteen per cent of the number of legal voters residing in such city or town at the preceding state election. Whenever such a petition is filed with the board of registrars of voters of any city or town, the board shall within ten days of its receipt determine the sufficiency and validity of the signatures and certify the results to the city council of the city or board of selectmen of the town, as the case may be. As used in this section, the phrase "board of registrars of voters" shall include any local authority of different designation which performs the duties of such registrars, and the phrase "city council of the city or board of selectmen of the town" shall include local authorities of different designation performing the duties of such council or board. Objections to the sufficiency and validity of the signatures on any such petition as certified by the board of registrars of voters shall be made in the same manner as provided by law for objections to nominations for city or town offices, as the case may be.

Within thirty days of receipt of certification of the board of registrars of voters that a petition

contains sufficient valid signatures, the city council of the city or board of selectmen of the town shall by order provide for submitting to the voters of the city or town the question of adopting or revising a charter, and for the nomination and election of a charter commission.

If the city or town has not previously adopted a charter pursuant to this section, the question submitted to the voters shall be: "Shall a commission be elected to frame a charter for (name of city or town)?" If the city or town has previously adopted a charter pursuant to this section, the question submitted to the voters shall be: "Shall a commission be elected to revise the charter of (name of city or town)?"

The charter commission shall consist of nine voters of the city or town, who shall be elected at large without party or political designation at the city or town election next held at least sixty days after the order of the city council of the city or board of selectmen of the town. The names of candidates for such commission shall be listed alphabetically on the ballot used at such election. Each voter may vote for nine candidates.

The vote on the question submitted and the election of the charter commission shall take place at the same time. If the vote on the question submitted is in the affirmative, the nine candidates receiving the highest number of votes shall be declared elected.

Within eighteen months after the election of the members of the charter commission, said commission shall submit the charter or revised charter to the city council of the city or the board of selectmen of the town, and such council or board shall provide for publication of the charter and for its submission to the voters of the city or town at the next city or town election held at least two months after such submission by the charter commission. If the charter or revised charter is approved by a majority of the voters of the city or town voting thereon, it shall become effective upon the date fixed in the charter.

Section 4. Procedure for Amendment of a Charter by a City or Town

Every city and town shall have the power to amend its charter in the following manner: The legislative body of a city or town may, by a two-thirds vote, propose amendments to the charter of the city or town; provided, that (1) amendments of a city charter may be proposed only with the concurrence of the mayor in every city that has a mayor, and (2) any change in a charter relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager or the board of selectmen or town manager shall be made only by the procedure of charter revision set forth in section three.

All proposed charter amendments shall be published and submitted for approval in the same manner as provided for adoption or revision of a charter.

Section 5. Recording of Charters and Charter Amendments

Duplicate certificates shall be prepared setting forth any charter that has been adopted or revised and any charter amendments approved, and shall be signed by the city or town clerk. One such certificate shall be deposited in the office of the secretary of the commonwealth and the other shall be recorded in the records of the city or town and deposited among its archives. All courts may take judicial notice of charters and charter amendments of cities and towns.

Section 6. Governmental Powers of Cities and Towns

Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court by section eight, and which is not denied, either expressly or by clear implication, to the city or town by its charter. This section shall apply to every city and town, whether or not it has adopted a charter pursuant to section three.

Section 7. Limitations on Local Powers

Nothing in this article shall be deemed to grant to any city or town the power to (1) regulate elections other than those prescribed by sections three and four; (2) to levy, assess and collect taxes; (3) to borrow money or pledge the credit of the city or town; (4) to dispose of park land; (5) to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power; or (6) to define and provide for the punishment of a felony or to impose impris-

onment as a punishment for any violation of law; provided, however, that the foregoing enumerated powers may be granted by the general court in conformity with the constitution and with the powers reserved to the general court by section eight; nor shall the provisions of this article be deemed to diminish the powers of the judicial department of the commonwealth.

Section 8. Powers of the General Court

The general court shall have the power to act in relation to cities and towns, but only by general laws which apply alike to all cities, or to all towns, or to all cities and towns, or to a class of not fewer than two, and by special laws enacted (1) on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town, with respect to a law relating to that city or town; (2) by a two-thirds vote of each branch of the general court following a recommendation by the governor; (3) to erect and constitute metropolitan or regional entities, embracing any two or more cities or towns or cities and towns, or established with other than existing city or town boundaries, for any general or special public purpose or purposes, and to grant to these entities such powers, privileges and immunities as the general court shall deem necessary or expedient for the regulation and government thereof; or (4) solely for the incorporation or dissolution of cities or towns as corporate entities, alteration of city or town boundaries, and merger or consolidation of cities and towns, or any of these matters.

Subject to the foregoing requirements, the general court may provide optional plans of city or town organization and government under which an optional plan may be adopted or abandoned by majority vote of the voters of the city or town voting thereon at a city or town election; provided, that no town of fewer than twelve thousand inhabitants may be authorized to adopt a city form of government, and no town of fewer than six thousand inhabitants may be authorized to adopt a form of town government providing for a town meeting limited to such inhabitants of the town as may be elected to meet, deliberate, act and vote in the exercise of the corporate powers of the town.

This section shall apply to every city and town whether or not it has adopted a charter pursuant to section three.

Section 9. Existing Special Laws

All special laws relating to individual cities or towns shall remain in effect and have the force of an existing city or town charter, but shall be subject to amendment or repeal through the adoption, revision or amendment of a charter by a city or town in accordance with the provisions of sections three and four and shall be subject to amendment or repeal by laws enacted by the general court in conformity with the powers reserved to the general court by section eight.

Art. XVIII. Free exercise of religion; support of public schools; use of public money or credit for schools and institutions

Section 1. No law shall be passed prohibiting the free exercise of religion.

Sec. 2. No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the commonwealth or federal authority or both, except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts and for free public libraries in any city or town, and to carry out legal obligations, if any, already entered into; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society. Nothing herein contained shall be construed to prevent the commonwealth from making grants-in-aid to private higher educational institutions or to students or parents or guardians of students attending such institutions.

Sec. 3. Nothing herein contained shall be construed to prevent the commonwealth, or any political division thereof, from paying to privately controlled hospitals, infirmaries, or institutions for the deaf, dumb or blind not more than the ordinary and reasonable compensation for care or support actually rendered or furnished by such hospitals, infirmaries or institutions to such persons as may be in whole or in part unable to support or care for themselves.

SEC. 4. Nothing herein contained shall be construed to deprive any inmate of a publicly controlled reformatory, penal or charitable institution of the opportunity of religious exercises therein of his own faith; but no inmate of such institution shall be compelled to attend religious services or receive religious instruction against his will, or, if a minor, without the consent of his parent or guardian.

SEC 5. This amendment shall not take effect until the October first next succeeding its ratification and adoption by the people.

PART II

EXTRACTS FROM THE GENERAL LAWS

CHAPTER 4

STATUTES

Selected sections

Section

4. Mode of acceptance of statute by municipality or district.
4A. Revocation of acceptance by towns of special acts.
4B. Rescission of laws previously accepted by cities, towns or municipalities.
6. Rules for construction of statutes.
7. Definitions of statutory terms; statutory construction.
8. Construction of special acts authorizing municipalities to incur indebtedness.
9. Time for performance of acts performable on Sunday or holiday.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 4. Mode of acceptance of statute by municipality or district

Wherever a statute is to take effect upon its acceptance by a municipality or district, or is to be effective in municipalities or districts accepting its provisions, this acceptance shall be, except as otherwise provided in that statute, in a municipality, by vote of the legislative body, subject to the charter of the municipality, or, in a district, by vote of the district at a district meeting.

Amended by St.1962, c. 182; St.1966, c. 253; St.1977, c. 870, § 1; St.2004, c. 122, § 1, eff. Sept. 1, 2004.

§ 4A. Revocation of acceptance by towns of special acts

At any time after the expiration of three years from the date on which any special act of the general court has been accepted by the voters of a town, and not less than ninety days before the date of an annual meeting, a petition signed by not less than ten per cent of the registered voters of the town may be filed with the selectmen, requesting that the question of revoking the acceptance of any special act be submitted to the voters. Thereupon the selectmen shall cause the question of revocation of the acceptance of such special act to be placed on the ballot at the next annual election. At said election the vote shall be taken in answer to the following question, which shall be placed on the official ballot to be used for the election of town officers:— "Shall the acceptance by the town of of an act passed by the General Court in the year , being chapter of the acts of , entitled 'An Act providing in the town of ' be revoked?" If such revocation is favored by a majority of the voters voting thereon by ballot, the acceptance of said act shall be revoked and said act shall become null and void beginning with the first day of the month next following said revocation. This section shall not apply in towns having a population in excess of fifteen thousand inhabitants, nor shall it apply to any acceptance by a town authorizing but not requiring it to act in any manner, to any action taken under chapters thirty-one or thirty-two, to any special act in which other provision is made for revocation, to any special act which authorizes the making of a capital outlay or public improvement, nor to any special act involving participation or membership in a district including a regional school district. No revocation of a special act hereunder shall affect in any manner any contractual rights, civil service rights, rights of tenure, or pension or retirement rights arising from the provisions of such special act.

Added by St.1952, c. 223.

§ 4B. Rescission of laws previously accepted by cities, towns or municipalities

At any time after the expiration of three years from the date on which a law to take effect upon its acceptance by a city or town or a municipality as defined in section four, or is to be effective in such cities, towns or municipalities accepting its provisions, has been accepted in any such city, town or

municipality such statute may be revoked in the same manner as it was accepted by such city, town or municipality, but such revocation shall be subject to the following restrictions:

(a) This section shall not apply if such law provides for another manner of revocation.

(b) This section shall not apply to any such law which authorizes, but does not require, acceptance by a city, town or municipality to act.

(c) This section shall not apply to any action taken under chapter thirty-two or thirty-two B.

(d) This section shall not apply to any action taken to establish a regional district, authority or other entity which involves another city, town, municipality, district or other governmental entity.

(e) This section shall not affect any contractual or civil service rights which have come into existence between the city, town or municipality and any officer or employee thereof as a result of the original acceptance of any such law or the provisions thereof; provided, however, that such revocation shall apply to the successor to the incumbent officer or employee, which application shall prevent such contractual or civil service right from automatically continuing with respect to such successor officer or employee.

If a petition signed by five per cent or more of the registered voters of a city or town is filed in the office of the city or town clerk within sixty days following a vote other than a vote taken by voters on an official ballot to revoke the acceptance of any optional provision of the General Laws, requesting that the revoking of such acceptance be submitted as a question to the voters of such city or town, said vote to revoke shall be suspended from taking effect until such question is determined by vote of the registered voters voting thereon at the next regular city or town election, or if the city council or board of selectmen or other authority charged with calling elections shall so direct, at a special election called for that purpose. Petitions filed requesting the placement of the question or revocation on the ballot for determination by the voters shall be substantially in conformity with the provisions of the law governing the signing of nomination papers for city or town officers, as to the identification and certification of names thereon, and submission to the registrars thereof. A brief summary of the relevant section or sections of the General Laws shall also appear on the official ballot. If such revocation is favored by a majority of the voters voting thereon, the acceptance of said optional law shall be revoked and it shall become null and void beginning with the first day of the month next following said vote of revocation. The question to be placed on a ballot shall be essentially as follows:

"Shall the acceptance by _____ (City, Town) of section(s) _____ of chapter _____ of the General Laws be revoked?

YES_____ NO_____".

If, on the sixty-first day following the date a vote has been taken to revoke the acceptance of an optional provision of the General Laws, and no petition as aforesaid has been filed, the vote to revoke shall become effective forthwith.

If at the time a city, town, municipality or district is authorized to revoke its acceptance of a law under the provisions of this section and such city, town, municipality or district has adopted a change in charter or otherwise is required to adopt a different procedure for acceptance of such law other than that procedure used for its original acceptance, then the procedure for acceptance in effect at the time of revocation shall be the manner for revoking such original acceptance.

Added by St.1980, c. 580, Sec. 5. Amended by St.1981, c. 782, § 2.

§ 6. Rules for construction of statutes

In construing statutes the following rules shall be observed, unless their observance would involve a construction inconsistent with the manifest intent of the law-making body or repugnant to the context of the same statute:

First, The repeal of a statute shall not revive any previous statute, except in case of the repeal of a statute, after it has become law, by vote of the people upon its submission by referendum petition.

Second, The repeal of a statute shall not affect any punishment, penalty or forfeiture incurred before the repeal takes effect, or any suit, prosecution or proceeding pending at the time of the repeal for an offence committed, or for the recovery of a penalty or forfeiture incurred, under the statute repealed.

Third, Words and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Fourth, Words importing the singular number may extend and be applied to several persons or things, words importing the plural number may include the singular, and words of one gender may be construed to include the other gender and the neuter.

Fifth, Words purporting to give a joint authority to, or to direct any act by, three or more public officers or other persons shall be construed as giving such authority to, or directing such act by, a majority of such officers or persons.

Sixth, Wherever any writing is required to be sworn to or acknowledged, such oath or acknowledgment shall be taken before a justice of the peace or notary public, or such oath may be dispensed with if the writing required to be sworn to contains or is verified by a written declaration under the provisions of section one A of chapter two hundred and sixty-eight.

Seventh, Wherever action by more than a majority of a city council is required, action by the designated proportion of the members of each branch thereof, present and voting thereon, in a city in which the city council consists of two branches, or action by the designated proportion of the members thereof, present and voting thereon, in a city having a single legislative board, shall be a compliance with such requirement.

Eighth, Wherever publication is required in a newspaper published in a city or town, it shall be sufficient, when there is no newspaper published therein, if the publication is made in a newspaper with general circulation in such city or town. If a newspaper is not published in such city or town and there is no newspaper with general circulation in such city or town, it shall be sufficient if the publication is made in a newspaper published in the county where such city or town is situated. A newspaper which by its title page purports to be printed or published in such city, town or county, and which has a circulation therein, shall be deemed to have been published therein.

Ninth, Wherever a penalty or forfeiture is provided for a violation of law, it shall be for each such violation.

Tenth, Words purporting to give three or more public officers or other persons authority to adopt, amend or repeal rules and regulations for the regulation, government, management, control or administration of the affairs of a public or other body, board, commission or agency shall not be construed as authorizing the adoption of a rule or regulation relative to a quorum which would conflict with the provisions of clause Fifth in the absence of express and specific mention therein to that effect.

Eleventh, The provisions of any statute shall be deemed severable, and if any part of any statute shall be adjudged unconstitutional or invalid, such judgment shall not affect other valid parts thereof.

Added by St.1967, c. 867, § 1. Amended by St.1983, c. 210; St.1989, c. 216; St.1998, c. 170.

Historical and Statutory Notes

R.S.1836, c. 2, § 6, cl. 1.
R.S.1836, c. 2, § 6, cl. 2.
R.S.1836, c. 2, § 6, cl. 3.
G.S.1860, c. 3, § 7.
G.S.1860, c. 3, § 7, cl. 1.
G.S.1860, c. 3, § 7, cl. 2.
G.S.1860, c. 3, § 7, cl. 3.
St.1869, c. 410.
P.S.1882, c. 3, § 3.
P.S.1882, c. 3, § 3, cl. 1.
P.S.1882, c. 3, § 3, cl. 2.
P.S.1882, c. 3, § 3, cl. 3.
P.S.1882, c. 3, § 3, cl. 4.
P.S.1882, c. 3, § 3, cl. 5.
R.L.1902, c. 8, § 4.
R.L.1902, c. 8, § 4, cl. 1.
R.L.1902, c. 8, § 4, cl. 2.
R.L.1902, c. 8, § 4, cl. 3.
R.L.1902, c. 8, § 4, cl. 4.
R.L.1902, c. 8, § 4, cl. 5.
St.1912, c. 360.
St.1919, c. 301, § 1.
St.1926, c. 187, § 2.
St.1931, c. 394, § 183.

§ 7. Definitions of statutory terms; statutory construction

In construing statutes the following words shall have the meanings herein given, unless a contrary intention clearly appears:

First, "Aldermen", "board of aldermen", "mayor and aldermen", "city council" or "mayor" shall, in a city which has no such body or officer, mean the board or officer having like powers or duties.

Second, "Annual meeting", when applied to towns, shall mean the annual meeting required by law to be held in the month of February, March or April.

Second A, "Appointing authority", when used in connection with the operation of municipal governments shall include the mayor of a city and the board of selectmen of a town unless some other local office is designated as the appointing authority under the provisions of a local charter.

Third, "Assessor" shall include any person chosen or appointed in accordance with law to perform the duties of an assessor.

Third A, "Board of selectmen", when used in connection with the operation of municipal governments shall include any other local office which is performing the duties of a board of selectmen, in whole or in part, under the provisions of a local charter.

[There is no clause Fourth.]

Fifth, "Charter", when used in connection with the operation of city and town government shall include a written instrument adopted, amended or revised pursuant to the provisions of chapter forty-three B which establishes and defines the structure of city and town government for a particular community and which may create local offices, and distribute powers, duties and responsibilities among local offices and which may establish and define certain procedures to be followed by the city or town government. Special laws enacted by the general court applicable only to one city or town shall be deemed to have the force of a charter and may be amended, repealed and revised in accordance with the provisions of chapter forty-three B unless any such special law contains a specific prohibition against such action.

Fifth A, "Chief administrative officer", when used in connection with the operation of municipal governments, shall include the mayor of a city and the board of selectmen in a town unless some other local office is designated to be the chief administrative officer under the provisions of a local charter.

Fifth B, "Chief executive officer", when used in connection with the operation of municipal governments shall include the mayor in a city and the board of selectmen in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.

Sixth, "City solicitor" shall include the head of the legal department of a city or town.

Sixth A, "Coterminous", shall mean, when applied to the term of office of a person appointed by the governor, the period from the date of appointment and qualification to the end of the term of said governor; provided that such person shall serve until his successor is appointed and qualified; and provided, further, that the governor may remove such person at any time, subject however to the condition that if such person receives notice of the termination of his appointment he shall have the right, at his request, to a hearing within thirty days from receipt of such notice at which hearing the governor shall show cause for such removal, and that during the period following receipt of such notice and until final determination said person shall receive his usual compensation but shall be deemed suspended from his office.

Seventh, "District", when applied to courts or the justices or other officials thereof, shall include municipal.

Eighth, "Dukes", "Dukes county" or "county of Dukes" shall mean the county of Dukes county.

Ninth, "Fiscal year", when used with reference to any of the offices, departments, boards, commissions, institutions or undertakings of the commonwealth, shall mean the year beginning with July first and ending with the following June thirtieth.

Tenth, "Gaming", "illegal gaming" or "unlawful gaming" shall include every act punishable under any law relative to lotteries, policy lotteries or policy, the buying and selling of pools or registering of bets.

Eleventh, "Grantor" may include every person from or by whom a freehold estate or interest passes in or by any deed; and "grantee" may include every person to whom such estate or interest so passes.

Twelfth, "Highway", "townway", "public way" or "way" shall include a bridge which is a part thereof.

Thirteenth, "In books", when used relative to the records of cities and towns, shall not prohibit the making of such records on separate leaves, if such leaves are bound in a permanent book upon the completion of a sufficient number of them to make an ordinary volume.

Fourteenth, "Inhabitant" may mean a resident in any city or town.

[There is no clause Fifteenth.]

Sixteenth, "Issue", as applied to the descent of estates, shall include all the lawful lineal descendants of the ancestor.

Seventeenth, "Land", "lands" and "real estate" shall include lands, tenements and hereditaments, and all rights thereto and interests therein; and "recorded", as applied to plans, deeds or other instruments affecting land, shall, as affecting registered land, mean filed and registered.

Eighteenth, "Legal holiday" shall include January first, July fourth, November eleventh, and Christmas Day, or the day following when any of said days occurs on Sunday, and the third Monday in January, the third Monday in February, the third Monday in April, the last Monday in May, the first Monday in September, the second Monday in October, and Thanksgiving Day. "Legal holiday" shall also include, with respect to Suffolk county only, Evacuation Day, on March seventeenth, and Bunker Hill Day, on June seventeenth, or the day following when said days occur on Sunday; provided, however, that all state and municipal agencies, authorities, quasi-public entities or other offices located in Suffolk county shall be open for business and appropriately staffed on Evacuation Day, on March seventeenth, and Bunker Hill Day, on June seventeenth, and that section forty-five of chapter one hundred and forty-nine shall not apply to Evacuation Day, on March seventeenth, and Bunker Hill Day, on June seventeenth, or the day following when said days occur on Sunday.

Eighteenth A, "Commemoration day" shall include March fifteenth, in honor of Peter Francisco day, May twentieth, in honor of General Marquis de Lafayette and May twenty-ninth, in honor of the birthday of President John F. Kennedy. The governor shall issue a proclamation in connection with each such commemoration day.

Eighteenth B, "Legislative body", when used in connection with the operation of municipal governments shall include that agency of the municipal government which is empowered to enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan orders, bond authorizations and other financial matters and whether styled a city council, board of aldermen, town council, town meeting or by any other title.

Nineteenth, "Month" shall mean a calendar month, except that, when used in a statute providing for punishment by imprisonment, one "month" or a multiple thereof shall mean a period of thirty days or the corresponding multiple thereof; and "year", a calendar year.

Nineteenth A, "Municipality" shall mean a city or town.

Twentieth, "Net indebtedness" shall mean the indebtedness of a county, city, town or district, omitting debts created for supplying the inhabitants with water and other debts exempted from the operation of the law limiting their indebtedness, and deducting the amount of sinking funds available for the payment of the indebtedness included.

Twenty-first, "Oath" shall include affirmation in cases where by law an affirmation may be substituted for an oath.

Twenty-second, "Ordinance", as applied to cities, shall be synonymous with by-law.

Twenty-third, "Person" or "whoever" shall include corporations, societies, associations and partnerships.

Twenty-fourth, "Place" may mean a city or town.

Twenty-fifth, "Preceding" or "following", used with reference to any section of the statutes, shall mean the section last preceding or next following, unless some other section is expressly designated in such reference.

Twenty-sixth, "Public records" shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:

(a) specifically or by necessary implication exempted from disclosure by statute;

(b) related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding;

(c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;

(d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;

(e) notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit;

(f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;

(g) trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;

(h) proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person;

(i) appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired;

(j) the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards;

[There is no subclause (k).]

(*l*) questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument;

(m) contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter one hundred and seventy-six *I*, a nonprofit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self insured and provides health care benefits to its employees.

(n) records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.

(*o*) the home address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.

(p) the name, home address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (*o*).

(q) Adoption contact information and indices therefore of the adoption contact registry established by section 31 of chapter 46.

(r) Information and records acquired under chapter 18C by the office of the child advocate.

(s) trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a govern-

mental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy; provided, however, that this subclause shall not exempt a public entity from disclosure required of a private entity so licensed.

Any person denied access to public records may pursue the remedy provided for in section ten of chapter sixty-six.

Twenty-seventh, "Salary" shall mean annual salary.

Twenty-eighth, "Savings banks" shall include institutions for savings.

[There is no clause Twenty-ninth.]

Thirtieth, "Spendthrift" shall mean a person who is liable to be put under guardianship on account of excessive drinking, gaming, idleness or debauchery.

Thirty-first, "State", when applied to the different parts of the United States, shall extend to and include the District of Columbia and the several territories; and the words "United States" shall include said district and territories.

Thirty-second, "State auditor" and "state secretary" shall mean respectively the auditor of the commonwealth and the secretary of the commonwealth. "State treasurer" or "treasurer of the commonwealth" shall mean the treasurer and receiver general as used in the constitution of the commonwealth, and shall have the same meaning in all contracts, instruments, securities and other documents.

Thirty-third, "Swear" shall include affirm in cases in which an affirmation may be substituted for an oath. When applied to public officers who are required by the constitution to take oaths therein prescribed, it shall refer to those oaths; and when applied to any other officer it shall mean sworn to the faithful performance of his official duties.

Thirty-fourth, "Town", when applied to towns or officers or employees thereof, shall include city.

Thirty-fifth, "Valuation", as applied to a town, shall mean the valuation of such town as determined by the last preceding apportionment made for the purposes of the state tax.

Thirty-sixth, "Water district" shall include water supply district.

Thirty-seventh, "Will" shall include codicils.

Thirty-eighth, "Written" and "in writing" shall include printing, engraving, lithographing and any other mode of representing words and letters; but if the written signature of a person is required by law, it shall always be his own handwriting or, if he is unable to write, his mark.

Thirty-ninth, "Annual election", as applied to municipal elections in cities holding such elections biennially, shall mean biennial election.

Fortieth, "Surety" or "Sureties", when used with reference to a fidelity bond of an officer or employee of a county, city, town or district, shall mean a surety company authorized to transact business in the commonwealth.

Forty-first, "Population", when used in connection with the number of inhabitants of a county, city, town or district, shall mean the population as determined by the last preceding national census.

[There is no clause Forty-second.]

Forty-third, "Veteran" shall mean (1) any person, (a) whose last discharge or release from his wartime service as defined herein, was under honorable conditions and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States, or on full time national guard duty under Titles 10 or 32 of the United States Code or under sections 38, 40 and 41 of chapter 33 for not less than 90 days active service, at least 1 day of which was for wartime service; provided, however, than any person who so served in wartime and was awarded a service-connected disability or a Purple Heart, or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete 90 days of active service; (2) a member of the American Merchant Marine who served in armed conflict between December 7, 1941 and December 31, 1946, and who has received honorable discharges from the United States Coast Guard, Army, or Navy; (3) any person (a) whose last discharge from active service was under honorable condi-

tions, and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States for not less than 180 days active service; provided, however, that any person who so served and was awarded a service-connected disability or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete 180 days of active service.

"Wartime service" shall mean service performed by a "Spanish War veteran", a "World War I veteran", a "World War II veteran", a "Korean veteran", a "Vietnam veteran", a "Lebanese peace keeping force veteran", a "Grenada rescue mission veteran", a "Panamanian intervention force veteran", a "Persian Gulf veteran", or a member of the "WAAC" as defined in this clause during any of the periods of time described herein or for which such medals described below are awarded.

"Spanish War veteran" shall mean any veteran who performed such wartime service between February fifteenth, eighteen hundred and ninety-eight and July fourth, nineteen hundred and two.

"World War I veteran" shall mean any veteran who (a) performed such wartime service between April sixth, nineteen hundred and seventeen and November eleventh, nineteen hundred and eighteen, or (b) has been awarded the World War I Victory Medal, or (c) performed such service between March twenty-fifth, nineteen hundred and seventeen and August fifth, nineteen hundred and seventeen, as a Massachusetts National Guardsman.

"World War II veteran" shall mean any veteran who performed such wartime service between September 16, 1940 and July 25, 1947, and was awarded a World War II Victory Medal, except that for the purposes of chapter 31 it shall mean all active service between the dates of September 16, 1940 and June 25, 1950.

"Korean veteran" shall mean any veteran who performed such wartime service between June twenty-fifth, nineteen hundred and fifty and January thirty-first, nineteen hundred and fifty-five, both dates inclusive, and any person who has received the Korea Defense Service Medal as established in the Bob Stump National Defense Authorization Act for fiscal year 2003.

"Korean emergency" shall mean the period between June twenty-fifth, nineteen hundred and fifty and January thirty-first, nineteen hundred and fifty-five, both dates inclusive.

"Vietnam veteran" shall mean (1) any person who performed such wartime service during the period commencing August fifth, nineteen hundred and sixty-four and ending on May seventh, nineteen hundred and seventy-five, both dates inclusive, or (2) any person who served at least one hundred and eighty days of active service in the armed forces of the United States during the period between February first, nineteen hundred and fifty-five and August fourth, nineteen hundred and sixty-four; provided, however, that for the purposes of the application of the provisions of chapter thirty-one, it shall also include all active service between the dates May seventh, nineteen hundred and seventy-five and June fourth, nineteen hundred and seventy-six; and provided, further, that any such person who served in said armed forces during said period and was awarded a service-connected disability or a Purple Heart, or who died in said service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete one hundred and eighty days of active service.

"Lebanese peace keeping force veteran" shall mean any person who performed such wartime service and received a campaign medal for such service during the period commencing August twenty-fifth, nineteen hundred and eighty-two and ending when the President of the United States shall have withdrawn armed forces from the country of Lebanon.

"Grenada rescue mission veteran" shall mean any person who performed such wartime service and received a campaign medal for such service during the period commencing October twenty-fifth, nineteen hundred and eighty-three to December fifteenth, nineteen hundred and eighty-three, inclusive.

"Panamanian intervention force veteran" shall mean any person who performed such wartime service and received a campaign medal for such service during the period commencing December twentieth, nineteen hundred and eighty-nine and ending January thirty-first, nineteen hundred and ninety.

"Persian Gulf veteran" shall mean any person who performed such wartime service during the period commencing August second, nineteen hun-

dred and ninety and ending on a date to be determined by presidential proclamation or executive order and concurrent resolution of the Congress of the United States.

"WAAC" shall mean any woman who was discharged and so served in any corps or unit of the United States established for the purpose of enabling women to serve with, or as auxiliary to, the armed forces of the United States and such woman shall be deemed to be a veteran.

None of the following shall be deemed to be a "veteran":

(a) Any person who at the time of entering into the armed forces of the United States had declared his intention to become a subject or citizen of the United States and withdrew his intention under the provisions of the act of Congress approved July ninth, nineteen hundred and eighteen.

(b) Any person who was discharged from the said armed forces on his own application or solicitation by reason of his being an enemy alien.

(c) Any person who has been proved guilty of wilful desertion.

(d) Any person whose only service in the armed forces of the United States consists of his service as a member of the coast guard auxiliary or as a temporary member of the coast guard reserve, or both.

(e) Any person whose last discharge or release from the armed forces is dishonorable.

"Armed forces" shall include army, navy, marine corps, air force and coast guard.

"Active service in the armed forces", as used in this clause shall not include active duty for training in the army national guard or air national guard or active duty for training as a reservist in the armed forces of the United States.

Forty-fourth, "Registered mail", when used with reference to the sending of notice or of any article having no intrinsic value shall include certified mail.

Forty-fifth, "Pledge", "Mortgage", "Conditional Sale", "Lien", "Assignment" and like terms, when used in referring to a security interest in personal property shall include a corresponding type of security interest under chapter one hundred and six of the General Laws, the Uniform Commercial Code.

Forty-sixth, "Forester", "state forester" and "state fire warden" shall mean the commissioner of environmental management or his designee.

Forty-seventh, "Fire fighter", "fireman" or "permanent member of a fire department", shall include the chief or other uniformed officer performing similar duties, however entitled, and all other fire officers of a fire department, including, without limitation, any permanent crash crewman, crash boatman, fire controlman or assistant fire controlman employed at the General Edward Lawrence Logan International Airport, or members of the Massachusetts military reservation fire department.

Forty-eighth, "Minor" shall mean any person under eighteen years of age.

Forty-ninth, "Full age" shall mean eighteen years of age or older.

Fiftieth, "Adult" shall mean any person who has attained the age of eighteen.

Fifty-first, "Age of majority" shall mean eighteen years of age.

Fifty-second, "Superior court" shall mean the superior court department of the trial court, or a session thereof for holding court.

Fifty-third, "Land court" shall mean the land court department of the trial court, or a session thereof for holding court.

Fifty-fourth, "Probate court", "court of insolvency" or "probate and insolvency court" shall mean a division of the probate and family court department of the trial court, or a session thereof for holding court.

Fifty-fifth, "Housing court" shall mean a division of the housing court department of the trial court, or a session thereof for holding court.

Fifty-sixth, "District court" or "municipal court" shall mean a division of the district court department of the trial court, or a session thereof for holding court, except that when the context means something to the contrary, said words shall include the Boston municipal court department.

Fifty-seventh, "Municipal court of the city of Boston" shall mean the Boston municipal court department of the trial court, or a session thereof for holding court.

Fifty-eighth, "Juvenile court" shall mean a division of the juvenile court department of the trial court, or a session thereof for holding court.

Amended by St.1934, c. 283; St.1935, c. 26; St.1936, c. 180; St.1937, c. 38; St.1938, c. 245; St.1941, c. 91, § 1; St.1941, c. 509, § 1; St.1945, c. 242, § 1; St.1945, c. 637, § 1; St.1946, c. 190; St.1948, c. 241; St.1951, c. 215, § 1; St.1953, c. 319, § 2; St.1954, c. 128, § 1; St.1954, c. 627, § 1; St.1955, c. 99, §§ 1, 2; St.1955, c. 403, § 1; St.1955, c. 683; St. 1956, c. 281, §§ 1, 2; St.1957, c. 164, § 1; St.1957, c. 765, § 3; St.1958, c. 140; St.1958, c. 626, § 1; St.1960, c. 299; St.1960, c. 544, § 1; St.1960, c. 812, § 1; St.1962, c. 427, § 1; St.1962, c. 616, § 1; St.1964, c. 322; St.1965, c. 875, §§ 1, 2; St.1966, c. 716; St.1967, c. 437; St.1967, c. 844, § 23; St.1968, c. 24, § 1; St.1968, c. 531, § 1; St.1969, c. 544, § 1; St.1969, c. 831, § 2; St.1970, c. 215, § 1; St.1973, c. 925, § 1; St.1973, c. 1050, § 1; St.1974, c. 205, § 1; St.1974, c. 493, § 1; St.1975, c. 706, § 2; St.1976, c. 112, § 1; St.1976, c. 156; St.1977, c. 130; St.1977, c. 691, § 1; St.1977, c. 977; St.1978, c. 12; St.1978, c. 247; St.1978, c. 478, § 2; St.1979, c. 230; St.1982, c. 189, § 2; St.1983, c. 113; St.1984, c. 363, §§ 1 to 4; St.1985, c. 114; St.1985, c. 220; St.1985, c. 451, § 1; St.1986, c. 534, §§ 1, 2; St.1987, c. 465, §§ 1, 1A; St.1987, c. 522, § 1; St.1987, c. 587, § 1; St.1988, c. 180, § 1; St.1989, c. 665, § 1; St.1991, c. 109, §§ 1, 2; St.1992, c. 133, § 169; St.1992, c. 286, § 1; St.1992, c. 403, § 1; St.1996, c. 204, § 3; St.1996, c. 450, §§ 1 to 4; St.2002, c. 313, § 1; St.2004, c. 116, § 1, eff. Aug. 26, 2004; St.2004, c. 122, § 2, eff. Sept. 1, 2004; St.2004, c. 149, § 8, eff. July 1, 2004; St.2004, c. 349, eff. Dec. 15, 2004; St.2005, c. 130, § 1, eff. Nov. 11, 2005; St.2007, c. 109, § 1, eff. Dec. 5, 2007; St.2008, c. 176, § 2, eff. July 8, 2008; St.2008, c. 308, § 1, eff. Sept. 1, 2008; St.2008, c. 445, § 1, eff. Mar. 30, 2009; St.2010, c. 131, § 5, eff. July 1, 2010.

Historical and Statutory Notes

R.S.1832, c. 2, § 6, cl. 17.
R.S.1836, c. 2, § 6, cl. 4.
R.S.1836, c. 2, § 6, cl. 5.
R.S.1836, c. 2, § 6, cl. 6.
R.S.1836, c. 2, § 6, cl. 7.
R.S.1836, c. 2, § 6, cl. 9.
R.S.1836, c. 2, § 6, cl. 10.
R.S.1836, c. 2, § 6, cl. 11.
R.S.1836, c. 2, § 6, cl. 12.
R.S.1836, c. 2, § 6, cl. 13.
R.S.1836, c. 2, § 6, cl. 14.
R.S.1836, c. 2, § 6, cl. 16.
R.S.1836, c. 2, § 6, cl. 18.
R.S.1836, c. 60, § 32.
R.S.1836, c. 61, § 13.
R.S.1836, c. 79, § 34.
St.1837, c. 52.
St.1856, c. 113, § 1.
G.S.1860, c. 2, § 24.
G.S.1860, c. 3, § 7.
G.S.1860, c. 3, § 7, cl. 4.
G.S.1860, c. 3, § 7, cl. 5.
G.S.1860, c. 3, § 7, cl. 6.
G.S.1860, c. 3, § 7, cl. 7.
G.S.1860, c. 3, § 7, cl. 8.
G.S.1860, c. 3, § 7, cl. 9.
G.S.1860, c. 3, § 7, cl. 10.
G.S.1860, c. 3, § 7, cl. 11.
G.S.1860, c. 3, § 7, cl. 12.
G.S.1860, c. 3, § 7, cl. 13.
G.S.1860, c. 3, § 7, cl. 14.
G.S.1860, c. 3, § 7, cl. 16.
G.S.1860, c. 3, § 7, cl. 17.
G.S.1860, c. 3, § 7, cl. 18.
G.S.1860, c. 3, § 7, cl. 19.
G.S.1860, c. 3, § 7, cl. 20.
G.S.1860, c. 3, § 7, cl. 21.
G.S.1860, c. 3, § 7, cls. 12, 22.
St.1875, c. 209, §§ 6, 10.
St.1880, c. 32.
St.1881, c. 71.
P.S.1882, c. 2, § 34.
P.S.1882, c. 3, § 3.
P.S.1882, c. 3, § 3, cl. 6.
P.S.1882, c. 3, § 3, cl. 7.
P.S.1882, c. 3, § 3, cl. 8.
P.S.1882, c. 3, § 3, cl. 9.
P.S.1882, c. 3, § 3, cl. 11.
P.S.1882, c. 3, § 3, cl. 12.
P.S.1882, c. 3, § 3, cl. 13.
P.S.1882, c. 3, § 3, cl. 14.
P.S.1882, c. 3, § 3, cl. 15.
P.S.1882, c. 3, § 3, cl. 16.
P.S.1882, c. 3, § 3, cl. 17.
P.S.1882, c. 3, § 3, cl. 18.
P.S.1882, c. 3, § 3, cl. 20.
P.S.1882, c. 3, § 3, cl. 21.
P.S.1882, c. 3, § 3, cl. 22.
P.S.1882, c. 3, § 3, cl. 23.
P.S.1882, c. 3, § 3, cl. 24.
P.S.1882, c. 3, § 3, cl. 25.
P.S.1882, c. 29, §§ 2, 3.
St.1882, c. 49.
St.1883, c. 127.
St.1887, c. 263.
St.1894, c. 130, § 4.
St.1894, c. 317, § 21, cl. 2, f.
St.1894, c. 522, § 34, cl. 4.
St.1895, c. 164.
St.1895, c. 419, § 1.
St.1896, c. 162, § 1.
St.1897, c. 439, § 1.
R.L.1901, c. 8, § 5, cl. 9.
R.L.1902, c. 8, § 5.
R.L.1902, c. 8, § 5, cl. 1.
R.L.1902, c. 8, § 5, cl. 2.
R.L.1902, c. 8, § 5, cl. 3.
R.L.1902, c. 8, § 5, cl. 4.
R.L.1902, c. 8, § 5, cl. 5.
R.L.1902, c. 8, § 5, cl. 7.
R.L.1902, c. 8, § 5, cl. 8.
R.L.1902, c. 8, § 5, cl. 11.
R.L.1902, c. 8, § 5, cl. 12.
R.L.1902, c. 8, § 5, cl. 14.
R.L.1902, c. 8, § 5, cl. 15.
R.L.1902, c. 8, § 5, cl. 16.
R.L.1902, c. 8, § 5, cl. 17.
R.L.1902, c. 8, § 5, cl. 18.
R.L.1902, c. 8, § 5, cl. 20.
R.L.1902, c. 8, § 5, cl. 21.
R.L.1902, c. 8, § 5, cl. 22.
R.L.1902, c. 8, § 5, cl. 23.
R.L.1902, c. 8, § 5, cl. 24.
R.L.1902, c. 8, § 5, cl. 25.
R.L.1902, c. 35, § 5.
R.L.1902, c. 113, § 10.
St.1905, c. 211, § 1.
St.1908, c. 590, §§ 1, 69.
St.1910, c. 473.
St.1911, c. 136.
St.1912, c. 445, § 1.
St.1913, c. 835, § 1.
St.1916, c. 104, § 1.

St.1917, c. 19.
St.1918, c. 257, § 476.
St.1919, c. 5.
St.1920, c. 2.
St.1920, c. 164.
St.1921, c. 486, § 1.
St.1924, c. 360.
St.1924, c. 404, § 1.
St.1928, c. 192, § 3.
St.1928, c. 235.
St.1929, c. 377, § 1.
St.1931, c. 394, § 208.
St.1931, c. 426, § 127.

§ 8. Construction of special acts authorizing municipalities to incur indebtedness

In construing any special act authorizing a city, town or district to incur indebtedness for a specified purpose to a limited amount, such limitation of amount shall be deemed to apply only to the indebtedness authorized by the special act, and not to affect any other power which the city, town or district may have to incur indebtedness for said purpose under any other provisions of law; and in special acts authorizing loans to be payable by proportionate payments, such provision shall be construed to mean payments as nearly equal in amount as is possible without unreasonable fractions, but no payment of the principal shall be greater than any preceding payment.

Historical and Statutory Notes

St.1913, c. 648.
St.1926, c. 56.

§ 9. Time for performance of acts performable on Sunday or holiday

Except as otherwise provided, when the day or the last day for the performance of any act, including the making of any payment or tender of payment, authorized or required by statute or by contract, falls on Sunday or a legal holiday, the act may, unless it is specifically authorized or required to be performed on Sunday or on a legal holiday, be performed on the next succeeding business day.

Historical and Statutory Notes

St.1907, c. 204.

CHAPTER 7

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

Selected sections

Section
22A. Collective purchasing by commonwealth and political subdivisions.

Section
22B. Collective purchasing by political subdivisions.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 22A. Collective purchasing by commonwealth and political subdivisions

Notwithstanding any general or special law relating to collective purchasing, but subject to all other laws regulating public purchases and competitive bidding, the commonwealth and 1 or more of its cities, towns, districts, counties, authorities or commonwealth or Horace Mann charter schools, or 2 or more cities, towns, districts, counties, authorities or commonwealth or Horace Mann charter schools, hereinafter called political subdivisions, may make purchases of materials, supplies, equipment or services through the state purchasing agent subject to such rules, regulations and procedures as may be established from time to time by the purchasing agent; provided, however, that the political subdivision shall accept sole responsibility for any payment due the vendor for its share of such purchase.

Added by St.1973, c. 720, § 2. Amended by St.1974, c. 114, § 1; St.2010, c. 12, § 1, eff. Jan. 19, 2010.

§ 22B. Collective purchasing by political subdivisions

Notwithstanding any contrary provision of law relating to collective purchasing, but subject, however, to all other laws regulating public purchases and competitive bidding, any two or more political subdivisions, as defined in section twenty-two A, may join together for the purpose of obtaining and accepting competitive bids on similar items of materials, supplies, equipment or services which they intend to purchase, provided that each political subdivision shall accept sole responsibility for any payment due the vendor for its share of such purchase. No political subdivision which serves as a purchasing agent under the provisions of this section shall be liable solely by reason of its actions as such agent for any claim based upon a breach of warranty or defects in the design, manufacture or installation of the materials, supplies or equipment purchased pursuant to this section.

Added by St.1973, c. 720, § 2. Amended by St.1974, c. 114, § 2; St.1987, c. 152.

CHAPTER 10

DEPARTMENT OF THE STATE TREASURER

Selected section

Section

58. Local and regional cultural councils.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 58. Local and regional cultural councils

Any city or town may establish a local cultural council and any consortium of cities and towns, with the approval of the council, may establish a regional cultural council. Local cultural councils shall consist of at least five and not more than twenty-two members to be appointed by the mayor of a city, the city manager in a city having a Plan D or E form of government, the board of selectmen of a town or the executive officer in a town having a town council form of government.

Regional cultural councils shall consist of an equal number of members to be appointed from each city or town within the consortium in the manner herein described. The regional cultural council may adopt, at its option, a proportional membership consistent with the population of each municipality; provided, however, that each municipality shall have at least one member; and provided, further, that the adoption of such option shall be by a two-thirds vote of the regional cultural council. Notwithstanding any provisions to the contrary, if the council deems it necessary or desirable in order to carry out the purposes of this section and sections fifty-six and fifty-seven, the council may certify for payment in accordance with the provisions of section fifty-six those applications for funds received from any local or regional cultural councils whose composition is determined by the council as not complying with the provisions of this section, provided that upon notice of such noncompliance, such local or regional cultural council, or its appointing authority, as the case may be, either cures such noncompliance or provides certification satisfactory to the council of how and by when such compliance will be achieved.

Members of the local and regional cultural council shall be appointed for staggered terms of three years and any such member shall not be appointed to more than two consecutive terms. Members shall have demonstrated scholarship or creativity in, or distinguished service to, the arts, humanities, or interpretive sciences.

Upon a vacancy, for any reason, the member's successor, if any, shall be appointed for a term of three years, and shall serve until the qualification of such member's successor. Members shall not be elected public officials. Members shall be considered to be special municipal employees for the purposes of chapter two hundred and sixty-eight A. For purposes of chapter two hundred and sixty-eight A, any local or regional cultural council member who is authorized thereby to make disclosure to such member's city or town clerk or appointing authority, or to request a determination from such member's appointing authority, or to seek approval from the local legislative body may in lieu thereof, disclose to, or seek such approval from the council, and the council is authorized to receive such disclosure and approve such exemptions. Local and regional cultural council members shall be classified as officers for purposes of section thirteen of chapter two hundred and fifty-eight. Members shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the discharge of their duties. Local and regional cultural councils shall annually elect a chairman, secretary and treasurer.

Local and regional cultural councils may establish administrative units, but no such cultural council shall utilize more than five percent of the monies received from the State Arts Lottery Fund for administrative purposes, including member expenses.

Subject to rules, regulations, rulings or guidelines of the council, such local or regional cultural councils may decide the distribution of arts lottery funds or other funds that may be allocable to them, may also conduct other activities to promote and encourage the arts, may enter into contracts, subject to approval of town counsel or city solicitor as to form, and may do and perform any and all acts which may be necessary or desirable to carry out such powers and the purposes of sections fifty-six to fifty-eight, inclusive. Nothing in the provisions of section twenty-seven of chapter ten shall prevent

a local or regional cultural council or an arts organization, or their agents or employees, from encouraging the sale of lottery tickets for the arts nor from being licensed as agents to sell lottery tickets for the arts. Notwithstanding the provisions of section fifty-three A of chapter forty-four, local and regional cultural councils may accept grants, contributions, gifts, bequests, devises, and other donations from all sources, including governmental bodies and shall deposit such monies and any other revenues, including revenues derived from local or regional cultural councils activities, in the revolving fund established under the provisions of this section. Funds received from sources other than the arts lottery fund may be disbursed at the discretion of the local or regional cultural council for the same purposes as arts lottery funds, including administrative expenses, provided, however, that the council may by rule, regulation, ruling or guideline establish further clarification of such purposes as well as procedures to assure that such funds are so used.

Notwithstanding the provisions of section fifty-three of chapter forty-four, any city, town or consortium of cities and towns otherwise pursuant to the provisions of section four A of chapter forty, shall establish in the city or town treasury, or in one of the cities or towns in the consortium a revolving account which shall be kept separate and apart from all other monies by the treasurer and in which shall be deposited all receipts from the state arts lottery fund, distributed under the provisions of section fifty-six, and any other receipts or donations to the local or regional cultural council authorized by law. A treasurer of a city, town or regional consortium as custodian may invest such portion of cash as deemed not required until such funds are to be expended and in such investments as are authorized under the provisions of section fifty-five of chapter forty-four. All such funds, including interest earned thereon, may be expended at the direction of the local or regional cultural council, without further appropriation, and such council may establish a subcommittee of no less than two members and may delegate thereto its authority to approve all payrolls, bills, requests for payment, or accounts prior to submission to the accountant, auditor or official performing similar functions; provided, however, that such subcommittee shall make available to such council at its next meeting, a record of such actions of such subcommittee; and provided further, however, that such funds as shall not have been expended twelve months after receipt shall be segregated and subject to further appropriation by the mayor, city council, city manager, board of selectmen or town manager for the purposes provided in sections fifty-six to fifty-eight inclusive. The city auditor, town accountant, or officer having similar duties, shall submit annually a report of said, revolving fund to the mayor, city council, city manager, board of selectmen, or town manager for their review and a copy of said report shall be submitted to the director of the bureau of accounts and the council.

Added by St.1989, c. 653, § 15. Amended by St.1992, c. 133, § 203.

CHAPTER 16

DEPARTMENT OF HIGHWAYS

Selected section

Section
24A. Taxation of private resource recovery facilities or landfills.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 24A. Taxation of private resource recovery facilities or landfills

The operator of a privately owned or operated resource recovery facility or landfill shall pay to the city or town in which the facility or landfill is located a tax of one dollar per ton of solid waste processed at the facility. Said tax shall be increased every January first, effective January first, nineteen hundred and eighty-one by the percentage increase of the Boston Consumer Price Index for all urban consumers for the twelve month period ending the previous October first. Such tax shall be in lieu of all taxes, fees, charges or assessments imposed by the city or town in which the facility or landfill is located, except for real estate taxes imposed solely upon the land on which the said facility or landfill is located. For purposes of this section, a solid waste disposal facility or resource recovery facility shall not include a transfer station. Added by St.1975, c. 500, § 3. Amended by St.1982, c. 551; St.1987, c. 584, § 2.

CHAPTER 20

DEPARTMENT OF FOOD AND AGRICULTURE

Selected sections

Section

23. Program to assist in acquisition of agricultural preservation restrictions.
24. Agricultural lands preservation committee.
25. Annual report of agricultural lands preservation committee.
26. Property tax assessment of land under agricultural preservation restrictions.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 23. Program to assist in acquisition of agricultural preservation restrictions

(a) The secretary of environmental affairs shall establish a program to assist the commonwealth in the acquisition of agricultural preservation restrictions as defined in section 31 of chapter 184, for land actively devoted to agricultural or horticultural uses as defined in sections 1 to 5, inclusive, of chapter 61A. The commissioner of agricultural resources may from funds appropriated to carry out this section, or received from other sources, pay any agricultural land owner for a project submitted by a city or town and approved by the agricultural lands preservation committee established by section 24 such amount as is determined by the agricultural lands preservation committee to be equitable in consideration of anticipated benefits from such project but not to exceed the difference between the fair market value of such land and the fair market value of such land restricted for agricultural purposes pursuant to this section. Title to agricultural preservation restrictions shall be held in the name of the commonwealth; provided, however, that a city or town in which such land is located which provides assistance satisfactory to the agricultural lands preservation committee, including but not limited to providing of funds or portions thereof toward the purchase of such restriction, the providing of legal services and the enforcement of the preservation restriction, shall hold title to such land jointly with the commonwealth. Projects shall be administered by conservation commissions in cities and towns in which such commissions have been established, or in a city, by the city council or its delegated agency subject to the provisions of the city charter, or in a town, by the board of selectmen or its delegated agency. The commissioner, subject to the approval of the secretary, shall establish procedures for management of such program.

(b) Notwithstanding any general or special law to the contrary, the department of agricultural resources, with the approval of the co-holder, if any, in its sole discretion, may grant to any owner of land subject to an agricultural preservation restriction held by the commonwealth a nonassignable special permit allowing nonagricultural activities to occur on the agricultural preservation restriction land, provided: (1) the land is being actively utilized for full-time commercial agriculture; (2) the permit is for a maximum of 5 years duration, which may, at the discretion of the department, be renewed; and (3) the agricultural lands preservation committee finds that the grant of a special permit will not defeat or derogate from the intent and purposes of retaining the land for agricultural use and preserving the natural agricultural resources of the commonwealth and that the agricultural preservation restriction owner meets all requirements pertaining to special permits contained in the agricultural preservation restriction agreement form presently utilized by the commonwealth at the time of application for the special permit. Added by St. 2003, c. 26, § 62, eff. July 1, 2003.

§ 24. Agricultural lands preservation committee

(a) There shall be an agricultural lands preservation committee in the department of agricultural resources, the members of which shall be the commissioner of agricultural resources, who shall be chairman, the secretary of environmental affairs, the director of housing and community development, the director of the office of state planning, the chairman of the board of agricultural resources or their respective designees, and 4 members appointed by the governor, 2 of whom shall be owners and operators of farms within the commonwealth. Members appointed by the governor shall receive $50 for each day or portion thereof spent in discharge of their official duties not to exceed $600

annually and shall be reimbursed for the necessary expenses incurred. The dean of the college of food and natural resources of the University of Massachusetts and the state conservationist of the United States Department of Agriculture Soil Conservation Service, or their respective designees, shall serve as nonvoting members.

(b) The committee shall evaluate and accept or reject projects submitted by cities and towns. In so evaluating, the committee shall consider at a minimum the following:

(1) the suitability of land as to soil classification and other criteria for agricultural use;

(2) the fair market value of such land and the fair market value of such land when used for agricultural purposes as determined by independent appraisals; and

(3) the degree to which the acquisition would serve to preserve the agricultural potential of the commonwealth.

(c) The commissioner of agricultural resources may establish such rules and regulations as may be deemed necessary to carry out this section.

(d) Each member of the committee appointed by the governor shall be appointed for a term of 4 years, and until his successor is qualified. Of the first such members appointed, 1 shall serve for a term of 1 year; 1 shall serve for a term of 2 years; 1 shall serve for a term of 3 years; 1 shall serve for a term of 4 years. A person appointed to fill a vacancy shall serve for the unexpired term of such vacancy. Any member may be eligible for reappointment.

Added by St. 2003, c. 26, § 62, eff. July 1, 2003.

§ 25. Annual report of agricultural lands preservation committee

The agricultural lands preservation committee shall prepare an annual report. The report shall include the number and geographic distribution of applications accepted and rejected, the acreage and costs of purchases, and such other information as will enable the program to be evaluated.

Added by St. 2003, c. 26, § 62, eff. July 1, 2003.

§ 26. Property tax assessment of land under agricultural preservation restrictions

Land under agricultural preservation restrictions, while actively devoted to agricultural, horticultural or agricultural and horticultural use as defined in sections 1 to 5, inclusive, of chapter 61A, shall be assessed for general property tax purposes at values no greater than those determined by the methods and provisions of section 10 of said chapter 61A.

Added by St.2003, c. 26, § 62, eff. July 1, 2003.

CHAPTER 23A

DEPARTMENT OF ECONOMIC DEVELOPMENT

Selected sections

Section

3D. Economic target areas.
3E. Economic opportunity areas.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 3D. Economic target areas

The EACC may from time to time designate one or more areas of the commonwealth as ETAs, and take any and all actions necessary or appropriate thereto, upon compliance with the following:

(a) receipt of a municipal application requesting such designation and representing therein that the municipality, based on its own independent investigation, has determined that the area proposed for designation and comprised of three or more contiguous census tracts or one or more contiguous municipalities, in their entirety and either;

(i) has an unemployment rate that exceeds the statewide average by at least twenty-five percent; or

(ii) satisfies at least one of the following criteria:

(A) if the municipality is located in a metropolitan area as defined by the EACC, then at least fifty-one percent of the households in the area proposed for designation have household incomes that are below eighty percent of the median income for households in the metropolitan area in which said municipality is located;

(B) if the municipality is not located in a metropolitan area as defined by the EACC, then at least fifty-one percent of the households in the area proposed for the designation have household incomes that are below eighty percent of the median income for households (i) in the commonwealth, or (ii) in such applicable non-metropolitan area category as the EACC may from time to time establish or employ;

(C) has a poverty rate which is at least twenty percent higher than the average poverty rate for the commonwealth;

(D) if the municipality has experienced a plant closing or permanent layoffs, or military base closing resulting in job loss of two thousand or more within the four years prior to designation as an ETA;

(E) is located in a community or labor market area which has a distress factor greater than one and thirty-three one hundredths, as defined in section three A;

(F) if within the municipality there is an area owned by a state agency or authority authorized and established under the laws of the commonwealth which exceeds fifty acres and such land has, within the past ten years, been used to manufacture or repair maritime vessels and is zoned for development or industrial use which the municipality would like to designate as an ETA to develop and return to the tax rolls, and is not being developed or used by such agency or authority;

(G) the designated area has a commercial vacancy rate of 20 per cent or more; or

(H) the municipality has sited within it a generation facility, as defined pursuant to section 1 of chapter 164, which has a market value at the time of sale that is at least 50 per cent less than its current net book value.

(*I*) the area has sited within it a facility of at least 1,000,000 square feet, which facility would qualify as an abandoned building within the meaning of 38*O* of chapter 63; or

(J) the area has sited within it a development project of at least 200 acres to be used for the establishment of a regional technology center with the capability of supporting the build-out of 3,000,000 square feet of commercial or industrial space;

(K) the area has been designated by the municipality as an area with potential for the development of a Class I renewable energy generating sources, as defined by section 11F of chapter 25A.

(b) approval of the municipal application by the EACC; provided, however, that the EACC shall find, based on the information submitted in support of the municipal application and such additional investigation as the EACC shall make, and incorporate in its minutes, that the area or areas

proposed for designation in said application comport with the definition of an ETA as set forth in, clauses (i) to (iii), inclusive, of paragraph (a); provided, further, that such decision shall be effective as specified by the EACC; provided, further, that the statistical criteria employed by the EACC in making such designation shall be the most recent data available as of the date of such decision; provided, further, that the EACC shall be under no obligation to revoke or modify any designation because of changes in statistical data which are published subsequent to a designation decision; and, provided further, that in the event the statistical categories incorporated by reference as aforesaid are subsequently materially altered or superseded by the publishers thereof, the EACC is authorized and directed to develop or employ new categories of statistical criteria which most nearly comport with the aforesaid referenced criteria; provided, that said new categories of statistical criteria shall become effective when approved by the director of economic development.

Added by St.1993, c. 19, § 4. Amended by St.1996, c. 450, § 57; St.1997, c. 164, §§ 21, 22; St.1998, c. 161, § 115; St.1998, c. 194, § 67; St.1998, c. 463, § 22; St.2008, c. 169, § 8, eff. July 2, 2008.

§ 3E. Economic opportunity areas

The EACC may from time to time designate one or more areas of an ETA as an EOA, and take any and all actions necessary or appropriate thereto, upon compliance with the following:

(1) receipt of a municipal application requesting such designation for a specified period of years, which shall be not less than five years nor more than twenty years, and representing that the municipality, based on its own independent investigation, has determined that the area proposed for designation:

(a) is wholly within an area designated as an ETA pursuant to section three D;

(b) conforms to the definition of a "blighted open area", "decadent area", or "substandard area" as set forth in section one of chapter one hundred and twenty-one A or has experienced a plant closing or permanent layoff resulting in a job loss of two thousand or more within the four years prior to designation as an EOA or the municipality has sited within it a generation facility, as defined pursuant to section 1 of chapter 164, which has a market value at the time of sale that is at least 50 per cent less than its current net book value; and

(c) satisfies such additional mandatory or permissive criteria as may be prescribed from time to time by the EACC; and

(2) receipt with the municipal application of the following documents:

(a) a detailed map of the area proposed for designation, which clearly delineates and identifies such area and which indicates with particularity existing streets, highways, waterways, natural boundaries and other physical features;

(b) a statement describing the economic development goals of the municipality for the area proposed for designation for the five year period subsequent to the date on which the application is submitted;

(c) a statement which describes the manner and extent to which the municipality shall provide for an increase in the efficiency of the delivery of local services within the area proposed for designation;

(d) a plan, if any, to link the municipality's choice of banking institutions to the performance of such institutions in complying with the requirements of the community reinvestment act;

(e) a proposal which identifies an individual who shall be authorized to review and approve project proposals for and on behalf of the municipality and the standards and procedures to be employed thereby; and

(f) in the case of a municipal application submitted, in whole or in part, by a municipality with a population in excess of fifty thousand people according to the most recent United States census, an economic development plan submitted by said municipality which contains the following elements:

(i) a proposal which provides for streamlined licensing procedures for certified projects within the area proposed for designation;

(ii) a proposal which provides for the provision of adequate infrastructure support, including transportation access, water and sewer hook-ups, lighting, and other utilities, to and for certified projects within the area proposed for designation;

(iii) a statement which describes the municipality's proposals to secure access to publicly or privately sponsored training programs to be made available to employees of certified projects, or others who reside in the ETA which contains the area proposed for designation; and

(iv) a plan by which the municipality shall increase the level of involvement by private persons

and community development organizations in the economic revitalization of the area proposed for designation, which may include commitments from private persons to provide jobs and job training to residents and employees who work, or who will work, for certified projects in the area proposed for designation; and

(g) such additional documentation or information as may be prescribed by the EACC; and

(3) receipt with the municipal application of a binding written offer from the municipality, subject only to acceptance by the EACC through designation of the area proposed therefor, in the municipal application as an EOA, to provide to certified projects within the project EOA and pursuant to section fifty-nine of chapter forty either tax increment financing or a special tax assessment as follows:

(a) for the purposes of the provision of tax increment financing, said binding written offer shall contain a tax increment financing plan adopted in accordance with the provisions of, section fifty-nine of chapter forty; provided, however, that the tax incremental financing zone proposed in such plan shall in addition satisfy the requirements set forth in paragraph (1) of this section;

(b) for the purposes of the provision of a special tax assessment, said binding written offer shall set forth the following assessment schedule for each parcel of real property in and on which is located, and which is otherwise a part of, a certified project in the project EOA:

(i) in the first year, an assessment of zero percent of the actual assessed valuation of the parcel; provided, that such assessment shall be granted for the year designated in the binding written offer;

(ii) in the second year, an assessment of up to twenty-five percent of the actual assessed valuation of the parcel;

(iii) in the third year, an assessment of up to fifty percent of the actual assessed valuation of the parcel;

(iv) in the fourth year, an assessment of up to seventy-five percent of the actual assessed valuation of the parcel;

(v) in subsequent years, assessment of up to one hundred percent of the actual assessed valuation of the parcel.

For the purposes of this clause the term "municipality's fiscal year" shall refer to a period of three hundred and sixty-five days beginning, in the first instance, with the, calendar year in which the assessed property is purchased or acquired or the calendar year in which the assessed property is designated as an EOA, whichever is last to occur; provided, further, that no such written offer from a municipality shall be considered to be binding as aforesaid unless and until it is authorized.

(4) approval of the municipal application by the EACC, provided that the EACC shall find, based on the information submitted in support of the municipal application and such additional investigation as the EACC shall make, and incorporate in its minutes, that:

(a) the area or areas proposed for designation in said application comport with the definition of an EOA as set forth in clauses (a) to (c), inclusive, of paragraph (1); provided, however, that such decision shall be effective as specified by the EACC; provided, further, that the statistical criteria employed by the EACC in making its decision hereunder shall be the most recent data available as of the date of such decision; provided, further, that the EACC shall be under no obligation to withdraw or rescind any such designations because of changes in said statistical data which are published subsequent to such decision; provided, further, that in the event the statistical categories incorporated by reference in said clauses (a) to (c), inclusive, of said paragraph (1) are subsequently materially altered or superseded by the publishers thereof, the EACC is authorized and directed to develop or employ new categories of statistical criteria which most nearly comport with those incorporated by reference as aforesaid; and provided, further, that said new categories of statistical criteria shall become effective when approved by the director of economic development;

(b) the documents required pursuant to clauses (a) to (g), inclusive, of paragraph (2) are final and complete and otherwise satisfactory;

(c) the binding offer of the municipality complies with the requirements of paragraph (3); and

(d) the request for designation as set forth in the municipal application, in its entirety and including all documents and materials submitted therewith, will if approved, have a reasonable probability of inducing businesses to locate or expand within the area proposed for designation and thereby increase the prospects of achieving economic stability and reducing chronic unemployment in said area; provided, however, that (i) in evaluating requests for designation pursuant to this clause the EACC may,

subject to such criteria as it shall prescribe, consider and rank the relative merits of municipal applications, ascribing to each a total score which reflects the considered judgment of the EACC as to the prospects and degree to which said applications, if approved, will further the public purposes set forth in this clause; (ii) the EACC shall, if and as directed by the director of economic development, establish an application process pursuant to which municipal applications are reviewed in a competitive fashion; (iii) the EACC shall work with interested municipalities to assist such municipalities to understand the purpose and requirements of the application process and how to best exploit the economic development potential of an affirmative designation decision and, further, to minimize the administrative burden associated with such application process; and (iv) the EACC shall, through regulations or otherwise, tailor its program specifications to maximize the extent to which the commonwealth's economic opportunity area program can benefit from similar programs sponsored by the federal government and if necessary or appropriate, file legislation with the general court which seeks amendments designed to serve such purpose.

An EOA shall retain its designation for at least five years and not more than twenty years from the date it is so designated, as determined by the EACC, unless such designation is revoked prior to the expiration of the specified period; provided, however, that the EACC shall not specify a duration in excess of that requested in the municipal application. The designation of an EOA may be revoked only by the EACC, and only upon the following grounds: (a) upon the petition of the municipality which requested the designation which petition satisfies the authorization requirements for a municipal application, and which petition shall be granted as a matter of course; or (b) if the EACC determines, based on its own investigation, that plans and commitments incorporated with the municipal application for such designation are materially at variance with the conduct of the municipality subsequent to the designation and such variance is found to frustrate the public purpose which such designation was intended to advance. Any such revocation shall only be applied prospectively to deny certification to any projects located or to be located in such EOA and not certified prior to such revocation and shall not apply to, nor revoke any benefits due to or which may become due to, any certified project already in existence in said EOA, including but without limitation any benefits included in any plans and commitments incorporated with the municipal application for such designation; provided, however, that in no event shall a certified project receive any benefits arising from its status as a certified project for a period of longer than that specified by the EACC in its certification designation, including any renewals thereof, or twenty years, whichever period is of shorter duration. The EACC shall review the designation of each EOA at least once every two years. No designation of an area as an EOA may be renewed or extended except pursuant to the provisions of paragraphs (1) to (4), inclusive. No renewal shall be granted for a period to exceed, when combined with the durations of all prior periods of designation, twenty years.

(5) notwithstanding any provisions of sections three to three H, inclusive, the EACC shall not designate nor shall there exist at any one time more than 40 Economic Target Areas. The limitations imposed by this section shall not apply to the EACC in its designation of communities applying for designation under the federal empowerment zones and enterprise communities program, so called, or to communities applying for economic target area designation that qualify under the criteria set forth in subclauses (*I*) and (J) of clause (ii) of paragraph (a) of section 3D.

Added by St.1993, c. 19, § 4. Amended by St.1993, c. 110, § 76; St.1994, c. 126, § 7; St.1997, c. 164, § 23; St.1998, c. 161, § 116; St.1998, c. 194, § 67A; St.2006, c. 301, eff. Dec. 18, 2006.

CHAPTER 25A

DIVISION OF ENERGY RESOURCES

Chapter 25A of the General Laws was added by St.1979, c. 796, § 4. Title of chapter was amended by St.1992, c. 286, § 71.

Selected section

Section
11F. Renewable energy portfolio standard for retail electricity suppliers.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 11F. Renewable energy portfolio standard for retail electricity suppliers

(a) The department shall establish a renewable energy portfolio standard for all retail electricity suppliers selling electricity to end-use customers in the commonwealth. By December 31, 1999, the department shall determine the actual percentage of kilowatt-hours sales to end-use customers in the commonwealth which is derived from existing renewable energy generating sources. Every retail supplier shall provide a minimum percentage of kilowatt-hours sales to end-use customers in the commonwealth from new renewable energy generating sources, according to the following schedule: (1) an additional 1 per cent of sales by December 31, 2003, or 1 calendar year from the final day of the first month in which the average cost of any renewable technology is found to be within 10 per cent of the overall average spot-market price per kilowatt-hour for electricity in the commonwealth, whichever is sooner; (2) an additional one-half of 1 per cent of sales each year thereafter until December 31, 2009; and (3) an additional 1 per cent of sales every year thereafter. For the purpose of this subsection, a new renewable energy generating source is one that begins commercial operation after December 31, 1997, or that represents an increase in generating capacity after December 31, 1997, at an existing facility. Commencing on January 1, 2009, such minimum percentage requirement shall be known as the "Class I" renewable energy generating source requirement.

(b) For the purposes of this subsection, a renewable energy generating source is one which generates electricity using any of the following: (1) solar photovoltaic or solar thermal electric energy; (2) wind energy; (3) ocean thermal, wave or tidal energy; (4) fuel cells utilizing renewable fuels; (5) landfill gas; (6) waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; (7) naturally flowing water and hydroelectric; (8) low emission advanced biomass power conversion technologies using fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or algae; or (9) geothermal energy; provided, however, that the calculation of a percentage of kilowatt-hours sales to end-use customers in the commonwealth from new renewable generating sources shall exclude clauses (6) and (7). The department may also consider any previously operational biomass facility retrofitted with advanced conversion technologies as a renewable energy generating source. A renewable energy generating source may be located behind the customer meter within the ISO–NE, as defined in section 1 of chapter 164, control area if the output is verified by an independent verification system participating in the New England Power Pool Generation Information System, in this section called NEPOOL GIS, accounting system and approved by the department.

(c) New renewable energy generating sources meeting the requirements of this subsection shall be known as Class I renewable energy generating sources. For the purposes of this subsection, a Class I renewable energy generating source is one that began commercial operation after December 31, 1997, or represents the net increase from incremental new generating capacity after December 31, 1997 at an existing facility, where the facility generates electricity using any of the following: (1) solar photovoltaic or solar thermal electric energy; (2) wind energy; (3) ocean thermal, wave or tidal energy; (4) fuel cells utilizing renewable fuels; (5) landfill gas; (6) energy generated by new hydroelectric facilities, or incremental new energy from increased capacity or efficiency improvements at existing hydroelectric facilities; provided, however,

that (i) each such new facility or increased capacity or efficiency at each such existing facility must meet appropriate and site-specific standards that address adequate and healthy river flows, water quality standards, fish passage and protection measures and mitigation and enhancement opportunities in the impacted watershed as determined by the department in consultation with relevant state and federal agencies having oversight and jurisdiction over hydropower facilities; (ii) only energy from new facilities having a capacity up to 25 megawatts or attributable to improvements that incrementally increase capacity or efficiency by up to 25 megawatts at an existing hydroelectric facility shall qualify; and (iii) no such facility shall involve pumped storage of water or construction of any new dam or water diversion structure constructed later than January 1, 1998; (7) low emission advanced biomass power conversion technologies using fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or algae; (8) marine or hydrokinetic energy as defined in section 3; or (9) geothermal energy. A Class I renewable generating source may be located behind the customer meter within the ISO–NE control area if the output is verified by an independent verification system participating in the NEPOOL GIS accounting system and approved by the department.

(d) Every retail electric supplier providing service under contracts executed or extended on or after January 1, 2009, shall provide a minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth from Class II renewable energy generating sources. For the purposes of this section, a Class II renewable energy generating source is one that began commercial operation before December 31, 1997 and generates electricity using any of the following: (1) solar photovoltaic or solar thermal electric energy; (2) wind energy; (3) ocean thermal, wave or tidal energy; (4) fuel cells utilizing renewable fuels; (5) landfill gas; (6) energy generated by existing hydroelectric facilities, provided that such existing facility shall meet appropriate and site-specific standards that address adequate and healthy river flows, water quality standards, fish passage and protection measures and mitigation and enhancement opportunities in the impacted watershed as determined by the department in consultation with relevant state and federal agencies having oversight and jurisdiction over hydropower facilities; and provided further, that only energy from existing facilities up to 5 megawatts shall be considered renewable energy and no such facility shall involve pumped storage of water nor construction of any new dam or water diversion structure constructed later than January 1, 1998; (7) waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; (8) low emission advanced biomass power conversion technologies using fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or algae; (9) marine or hydrokinetic energy as defined in section 3; or (10) geothermal energy. A facility in clause (7) shall not be a Class II renewable generating source unless it operates or contracts for one or more recycling programs approved by the department of environmental protection. At least 50 per cent of any revenue received by the facility through the sale of Massachusetts RPS-eligible renewable energy certificates shall be allocated to such recycling programs. A Class II renewable generating source may be located behind the customer meter within the ISO–NE control area provided that the output is verified by an independent verification system participating in the NEPOOL GIS accounting system and approved by the department.

(e) Every retail supplier shall annually provide to end-use customers in the commonwealth generation attributes from Class II energy facilities in an amount approved by the department; provided, however, that the department shall specify that a certain percentage of these requirements shall be met through energy generated from a specific technology or fuel type in subsection (d). Such minimum percentage requirement for kilowatt-hour sales from Class II energy generating sources may be adjusted by the department as necessary to promote the continued operation of existing energy generating resources that meet the requirements of said subsection (d), and may be met through kilowatt-hour sales to end-use customers from any energy generating source meeting the requirements of said subsection (d).

(f) After conducting administrative proceedings, the department may add technologies or technology categories to any list; provided, however, that the following technologies shall not be considered renewable energy supplies: coal, oil, natural gas and nuclear power. The department shall estab-

lish and maintain regulations allowing for a retail supplier to discharge its obligations under this section by making an alternative compliance payment in an amount established by the department for Class I and Class II renewable energy generating sources. The department shall establish and maintain regulations outlining procedures by which each retail supplier shall annually submit for the department's review a filing illustrating the retail supplier's compliance with the requirements of this section.

(g) In satisfying its annual obligations under subsection (a), each retail supplier shall provide a portion of the required minimum percentage of kilowatt-hours sales from new on-site renewable energy generating sources located in the commonwealth and having a power production capacity of not more than 6 megawatts which began commercial operation after December 31, 2007, including, but not limited to, behind the meter generation and other similar categories of generation determined by the department. The portion of the required minimum percentage required to be supplied by such on-site renewable energy generating sources shall be established by the department; provided, however, that the department may specify that a certain percentage of these requirements shall be met through energy generated from a specific technology or fuel type.

(h) The department shall adopt regulations allowing for a retail supplier to discharge its obligations under subsection (g) by making an alternative compliance payment in an amount established by the department; provided, however, that the department shall set on-site generation alternative compliance payment rates at levels that shall stimulate the development of new on-site renewable energy generating sources.

(i) A municipal lighting plant shall be exempt from the obligations under this section so long as and insofar as it is exempt from the requirements to allow competitive choice of generation supply under section 47A of chapter 164.

Added by St.1997, c. 164, § 50. Amended by St.2008, c. 169, § 32, eff. July 2, 2008; St.2010, c. 240, § 63, eff. Aug. 1, 2010.

CHAPTER 29

STATE FINANCE

Selected sections

Section
64B. Deferred compensation contracts between governmental bodies and employees; investments.
64C. Individual retirement accounts between governmental bodies and employees.
64D. Deferred compensation program, annuity or other defined contribution plan; required participation.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 64B. Deferred compensation contracts between governmental bodies and employees; investments

The treasurer or, if there is no treasurer, the chief financial officer by whatever name that person is called, on behalf of any political subdivision, body politic and corporate, or public instrumentality created by the commonwealth or any county, city or town or group thereof by whatever name the body is called, including without limitation, an agency, authority, board, corporation or district, including also without limitation, any regional school, police, fire, refuse or sewage district, and hereinafter referred to as a "governmental body," which is not otherwise subject to any general or special law authorizing deferred compensation contracts with its employees, may contract with an employee of such governmental body to defer a portion of an employee's compensation and may, for the purposes of funding a deferred compensation program for said employee, established in accordance with the U.S. Internal Revenue Code, (the "Code") invest the deferred portion of the employee's income in a life insurance or annuity contract, mutual fund, or a bank investment trust. The treasurer or chief financial officer shall, before making any such investment, solicit bids from insurance companies authorized to conduct business within the commonwealth pursuant to chapter one hundred and seventy-five, mutual fund managers, and banks, which bids shall be sealed, and opened at a time and place designated by the treasurer or chief financial officer. Any bid submitted by an insurance company, mutual fund, or bank investment trust to fund the deferred compensation program shall, where applicable, clearly indicate the interest rate which shall be paid on the deferred funds, any commissions which will be paid to the salesmen, any load imposed for the purpose of administering the funds, mortality projections, expected payouts, tax implications for participating employees and such other information as the treasurer or chief financial officer may require. Any contract entered into between an employee and the governmental body pursuant to this section shall include all such information in terms the employee can reasonably be expected to understand.

As used in this section the word "employee" shall have the same meaning as the word "employee" in section one of chapter thirty-two and shall include consultants and independent contractors who are natural persons paid by the governmental body.

Notwithstanding the provisions of any general or special law to the contrary, the treasurer or chief financial officer shall not be required to solicit bids to invest the deferred portion of an employee's income provided: (a) the treasurer or chief financial officer elects to invest such funds in the same investment products as are provided through the deferred compensation plan for employees of the commonwealth administered by the state treasurer, provided such plan resulted from the solicitation of bids in accordance with bidding requirements comparable to those required under this section; or (b) the treasurer or chief financial officer elects to invest such funds in the investment products offered pursuant to a plan developed through a competitive process, provided that such plan resulted from the solicitation of bids by a group of any combination of three or more city, town, county or public authority treasurers or treasurers or chief financial officers of governmental bodies covered by this section acting as a "Common Group" for purposes of soliciting such proposals in accordance with bidding requirements comparable to those required under this section.

An employee may defer compensation; provided, however, that such deferral does not exceed the maximum allowable under the appropriate provisions of the Code, as amended and in effect for the

taxable year, and appropriate regulations thereunder.

Such deferred compensation program shall be in addition to and not a part of any retirement program or pension system as provided under said chapter thirty-two and any other benefit program provided by law for such employee. Any compensation deferred under such a plan shall continue to be included as regular compensation, as defined in section one of said chapter thirty-two, for the purpose of computing any retirement and pension benefits earned by any such employee, but any compensation so deferred shall not be included in the computation of any taxes withheld on behalf of any such employee.

Added by St.1988, c. 319. Amended by St.1998, c. 175, § 5.

§ 64C. Individual retirement accounts between governmental bodies and employees

The treasurer or, if there is no treasurer, the chief financial officer, by whatever name that person is called, of any political subdivision, body politic and corporate, or public instrumentality created by the commonwealth or by any county, city, or town or group thereof by whatever name the body is called, including without limitation an agency, board, authority, corporation or district, including, also without limitation, any regional school, police, fire, refuse or sewage district, hereinafter referred to as a "governmental body," which is not subject to a general or special law authorizing deferred compensation contracts with its employees, may contract with an employee of that governmental body to make contribution for and in the name of such employee, from amounts otherwise payable to the employee as current compensation, to an Individual Retirement Account ("IRA") by such employee established in accordance with the U.S. Internal Revenue Code, (the "Code"). The participating employee may invest that portion of his income so contributed to an IRA in an annuity contract, mutual fund, bank investment trust or other investment authorized by the Code. Before making such deduction, the treasurer or chief financial officer shall be required to solicit bids from insurance companies authorized to conduct business within the commonwealth pursuant to chapter one hundred and seventy-five, mutual fund managers and banks, which bids shall be sealed and opened at a time and place designated by the treasurer or chief financial officer. Any bid submitted by an insurance company, mutual fund, or bank investment trust seeking investment of the IRA contribution shall, where applicable, clearly indicate the interest rate which shall be paid on the invested funds, any commissions which will be paid to the salesmen, any load imposed for the purpose of administering the funds, expected payouts, tax implications for participating employees and such other information as the treasurer or chief financial officer may require. Upon the treasurer's or chief financial officer's determining which provider offers the product or products most beneficial to the employee in each category for which bids were solicited, the treasurer or chief financial officer may offer such employee the opportunity to establish an IRA with one or more such providers. The employee who wishes to invest his IRA funds with such provider, or combination of providers, may authorize the treasurer or chief financial officer to deduct from amounts otherwise payable to the employee, at one time or on a periodic basis, amounts to be paid into the employee's IRA. If the employee so elects, the treasurer or chief financial officer shall pay to the providers the amount designated by the employee, in the name of the employee, to the employee's IRA. Amounts so paid to the providers for the employee's IRA account shall belong exclusively to the employee. Except as otherwise provided herein, the treasurer or chief financial officer may restrict an employee's right to contract to have contributions made to an IRA through deductions and payments by the treasurer or chief financial officer, to those providers selected as the result of the competitive bidding process outlined herein, but the authority conferred upon the treasurer or chief financial officer shall not be construed to restrict or limit the right of any employee to establish one or more IRAs with such banks, insurance companies, or similar authorized institutions as the employee may choose in any manner other than through an authorized deduction by the treasurer or chief financial officer of a portion of the employee's compensation as outlined herein. Any contract entered into between an employee and the governmental body pursuant to this section shall include all information in terms the employee can reasonably be expected to understand.

As used in this section the word "employee" shall have the same meaning as the word "employee" in section one of chapter thirty-two and shall also include consultants and independent contractors who are natural persons paid by the governmental body.

An employee may contribute a portion of his compensation to an IRA under the program outlined herein so long as such contribution, for an employee who is single, is the lesser of two thousand dollars or one hundred per cent of his compensation for a taxable year, and, for an employee who is married, the contribution is the lesser of two thousand two hundred and fifty dollars or one hundred per cent of his compensation for a taxable year, such dollar amount to be adjusted to reflect any applicable amendments to the code adopted from time to time. If an employee has any compensation deferred under a deferred compensation plan for employees of the governmental body, if one is established by the treasurer or chief financial officer under section sixty-four B, then the aggregate amount of such deferred compensation deduction and amounts contributed to such employee's IRA shall not exceed the limits imposed upon such combined deduction and contribution by the Code.

Notwithstanding any provisions to the contrary, the treasurer or chief financial officer shall not be required to solicit bids to invest the contributed portion of an employee's income into the employee's IRA provided: (a) the treasurer or chief financial officer is authorized by the employee to pay that portion of the employee's compensation into the employee's IRA in the same investment products as are provided through a deferred compensation or IRA plan for employees of the commonwealth administered by the state treasurer or a deferred compensation plan for employees of the governmental body administered by the treasurer or chief financial officer, provided such plan resulted from the solicitation of bids in accordance with bidding requirements comparable to those required under this section; or (b) the treasurer or chief financial officer is authorized by the employee to pay that portion of the employee's compensation into the employee's IRA in the investment products offered pursuant to a deferred compensation or IRA plan developed through a competitive selection process, provided that such plan resulted from the solicitation of bids by a group of any combination of three or more city, town, county or public authority treasurers or treasurers or chief financial officers of government bodies covered by this section acting as a "Common Group" for purposes of soliciting such proposals in accordance with bidding requirements comparable to those required under this section.

Such IRA plan shall be in addition to and not a part of any retirement program or pension system as provided under said chapter thirty-two and any other benefit program provided by law for such employee. Any compensation contributed by the employee to his IRA under such a plan shall continue to be included as regular compensation, as defined in section one of said chapter thirty-two, for the purpose of computing any retirement and pension benefits earned by any such employee, but any compensation so contributed shall not be included in the computation of federal taxes but shall be included in the computation of state taxes withheld on behalf of any such employee.

Added by St.1988, c. 319.

§ 64D. Deferred compensation program, annuity or other defined contribution plan; required participation

Any governmental body, as defined in section sixty-four B, may require any person, who is receiving compensation from the governmental body for services performed and who is not a member of a retirement system as provided under chapter thirty-two or any other retirement system which meets the requirements of Section 3121(b)(7)(F) of the Internal Revenue Code and the regulations promulgated thereunder, to participate in the deferred compensation program established with regard to the governmental body, or tax sheltered annuity or any other defined contribution plan. The treasurer, or if there is no treasurer, the chief financial officer by whatever name that person is called, on behalf of a governmental body which has accepted the provisions of this section shall contract with any person, who is receiving compensation from the governmental body for services performed for the governmental body and who is not eligible for membership in the retirement system set forth in said chapter thirty-two that pertains to the governmental body, to withhold from that person's compensation at least such amounts as are necessary to provide the minimum level of benefits required to qualify said deferred compensation program, tax sheltered annuity or other defined contribution plan as a retirement system for said person as defined under said Section 3121(b)(7)(F) of said Code and the regulations promulgated thereunder but no greater than permitted under other provisions of the Internal Revenue Code.

All contracts formed with part-time, seasonal or temporary employees pursuant to the provisions of the first paragraph shall entitle the employee to a

single-sum distribution of the employee's deferral plus reasonable interest.

A governmental body may accept the provisions of this section by a majority vote of the selectmen for a town, the city council for a city, the county council for a county, the district members in a district, the members of the authority in an authority, and the governing body, by whatever name and in whatever form composed, in any other political subdivision, body politic and corporate, or public instrumentality created by the commonwealth.

Any governmental body already requiring, on the effective date of this act, participation in a public retirement system for persons who are receiving compensation from the governmental body for services performed and who are not members of a retirement system as provided under said chapter thirty-two shall be deemed to have accepted the provisions of this section without the requirement of a majority vote of the selectmen for a town, the city council for a city, the county council for a county, the district members in a district, the members of the authority in an authority, and the governing body, by whatever name and in whatever form composed, in any other political subdivision, body politic and corporate, or public instrumentality created by the commonwealth.

Added by St.1991, c. 494, § 2.

CHAPTER 30

GENERAL PROVISIONS RELATIVE TO STATE DEPARTMENTS, COMMISSIONS, OFFICERS AND EMPLOYEES

Selected section

Section
39M. Contracts for construction and materials; manner of awarding.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 39M. Contracts for construction and materials; manner of awarding

[Text of section applicable as provided by 2009, 30, Secs. 14, 15 and 46.]

(a) Every contract for the construction, reconstruction, alteration, remodeling or repair of any public work, or for the purchase of any material, as hereinafter defined, by the commonwealth, or political subdivision thereof, or by any county, city, town, district, or housing authority, and estimated by the awarding authority to cost more than ten thousand dollars, and every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency, as defined by subsection one of section forty-four A of chapter one hundred and forty-nine, estimated to cost more than $25,000 but not more than $100,000, shall be awarded to the lowest responsible and eligible bidder on the basis of competitive bids publicly opened and read by such awarding authority forthwith upon expiration of the time for the filing thereof; provided, however, that such awarding authority may reject any and all bids, if it is in the public interest to do so. Every bid for such contract shall be accompanied by a bid deposit in the form of a bid bond, or cash, or a certified check on, or a treasurer's or cashier's check issued by, a responsible bank or trust company, payable to the awarding authority. The amount of such bid deposit shall be five per cent of the value of the bid. Any person submitting a bid under this section shall, on such bid, certify as follows:

The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

_____
(Name of person signing bid)

_____
(Company)

This paragraph shall not apply to the award of any contract subject to the provisions of sections forty-four A to forty-four J, inclusive, of chapter one hundred and forty-nine and every such contract shall continue to be awarded as provided therein. In cases of extreme emergency caused by enemy attack, sabotage or other such hostile actions or resulting from an imminent security threat explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe, an awarding authority may, without competitive bids and notwithstanding any general or specific law, award contracts otherwise subject to this paragraph to perform work and to purchase or rent materials and equipment, all as may be necessary for temporary repair and restoration to service of any and all public work in order to preserve the health and safety of persons or property; provided, that this exception shall not apply to any permanent reconstruction, alteration, remodeling or repair of any public work.

(b) Specifications for such contracts, and specifications for contracts awarded pursuant to the provisions of said sections forty-four A to forty-four L of said chapter one hundred and forty-nine, shall be written to provide for full competition for each item of material to be furnished under the contract; except, however, that said specifications may be otherwise written for sound reasons in the public interest stated in writing in the public records of the awarding authority or promptly given in writing by the awarding authority to anyone making a written request therefor, in either instance such writing to be prepared after reasonable investigation. Every such contract shall provide that an item equal to that named or described in the said specifications may be furnished; and an item shall be considered equal to the item so named or described if, in the opinion of the awarding authority: (1) it is

at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the said specifications. For each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said name or described materials.

(c) The term "lowest responsible and eligible bidder" shall mean the bidder: (1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work; (2) who shall certify, that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (3) who shall certify that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; (4) who, where the provisions of section 8B of chapter 29 apply, shall have been determined to be qualified thereunder; and (5) who obtains within 10 days of the notification of contract award the security by bond required under section 29 of chapter 149; provided that for the purposes of this section the term "security by bond" shall mean the bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority; provided further, that if there is more than 1 surety company, the surety companies shall be jointly and severally liable.

(d) The provisions of this section shall not apply (1) to the extent that they prevent the approval of such specifications by any contributing federal agency, (2) to materials purchased under specifications of the state department of highways at prices established by the said department pursuant to advertisement and bidding in connection with work to be performed under the provisions of chapter eighty-one or chapter ninety, (3) to any transaction between the commonwealth and any of its political subdivisions or between the commonwealth and any public service corporation, and (4) to any contract of not more than twenty-five thousand dollars awarded by a governmental body, as defined by section two of chapter thirty B, in accordance with the provisions of section five of said chapter thirty B; and (5) to any contract solely for the purchase of material awarded by a governmental body, as defined by section 2 of chapter 30B, in accordance with section 5 of said chapter 30B.

(e) The word "material" as used in this section shall mean and include any article, assembly, system, or any component part thereof.

Added by St.1963, c. 842, § 1. Amended by St.1967, c. 535, §§ 4, 5; St.1976, c. 506, § 2; St.1977, c. 970, § 1; St.1983, c. 701, § 2; St.1984, c. 484, § 35; St.1985, c. 406, § 1; St.1985, c. 507; St.1989, c. 687, § 2; St.1991, c. 477, § 5; St.1991, c. 552, § 19; St.1996, c. 450, § 77; St.2000, c. 159, §§ 62, 63; St.2004, c. 193, §§ 9, 10, eff. July 19, 2004; St.2004, c. 306, § 1, eff. July 1, 2006; St.2008, c. 303, § 11, eff. Aug. 8, 2008.

CHAPTER 30A

STATE ADMINISTRATIVE PROCEDURE

Chapter 30A of the General Laws was added by St.1954, c. 681, § 1.

Selected sections

Section

18. Definitions applicable to Secs. 18 to 25.
19. Division of open government; open meeting law training; open meeting law advisory commission; annual report.
20. Meetings of a public body to be open to the public; notice of meeting; remote participation; recording and transmission of meeting; removal of persons for disruption of proceedings.
21. Meeting of public body in executive session.
22. Minutes of meetings.
23. Enforcement of open meeting law; complaints; hearing; civil action.
24. Investigation by attorney general of violations of open meeting law.
25. Authority of attorney general to promulgate rules and regulations, letter rulings and advisory opinions.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 18. Definitions applicable to Secs. 18 to 25

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Deliberation", an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that "deliberation" shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

"Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

"Executive session", any part of a meeting of a public body closed to the public for deliberation of certain matters.

"Intentional violation", an act or omission by a public body or a member thereof, in knowing violation of the open meeting law.

"Meeting", a deliberation by a public body with respect to any matter within the body's jurisdiction; provided, however, "meeting" shall not include:

(a) an on-site inspection of a project or program, so long as the members do not deliberate;

(b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;

(c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;

(d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or

(e) a session of a town meeting convened under section 9 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

"Minutes", the written report of a meeting created by a public body required by subsection (a) of section 22 and section 5A of chapter 66.

"Open meeting law", sections 18 to 25, inclusive.

"Post notice", to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

"Preliminary screening", the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

"Public body", a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created,

elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

"Quorum", a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

Added by St.2009, c. 28, § 18, eff. July 1, 2010. Amended by St.2010, c. 454, §§ 15 to 17, eff. Jan. 14, 2011.

§ 19. Division of open government; open meeting law training; open meeting law advisory commission; annual report

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:

(1) the general background of the legal requirements for the open meeting law;

(2) applicability of sections 18 to 25, inclusive, to governmental bodies;

(3) the role of the attorney general in enforcing the open meeting law; and

(4) penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee.

The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

(1) the number of open meeting law complaints received by the attorney general;

(2) the number of hearings convened as the result of open meeting law complaints by the attorney general;

(3) a summary of the determinations of violations made by the attorney general;

(4) a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;

(5) an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;

(6) the number of actions filed in superior court seeking relief from an order of the attorney general; and

(7) any additional information relevant to the administration and enforcement of the open meet-

ing law that the attorney general deems appropriate.

Added by St.2009, c. 28, § 18, eff. July 1, 2010.

§ 20. Meetings of a public body to be open to the public; notice of meeting; remote participation; recording and transmission of meeting; removal of persons for disruption of proceedings

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website in accordance with procedures established for this purpose and a duplicate copy of the notice shall be filed with the regulations division in the state secretary's office.

The attorney general shall have the authority to prescribe or approve alternative methods of notice where the attorney general determines such alternative will afford more effective notice to the public.

(d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any such recordings.

(f) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(g) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the require-

ments of the open meeting law and the consequences of violating it.

Added by St.2009, c. 28, § 18, eff. July 1, 2010. Amended by St.2010, c. 131, § 22, eff. July 1, 2010; St.2010, c. 454, § 18, eff. Jan. 14, 2011.

§ 21. Meeting of public body in executive session

(a) A public body may meet in executive session only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

i. to be present at such executive session during deliberations which involve that individual;

ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;

iii. to speak on his own behalf; and

iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;

5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

(i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

10. to discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business

in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:

1. the body has first convened in an open session pursuant to section 21;

2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;

3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;

4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and

5. accurate records of the executive session shall be maintained pursuant to section 23.

Added by St.2009, c. 28, § 18, eff. July 1, 2010.

§ 22. Minutes of meetings

(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g)(1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

(2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

Added by St.2009, c. 28, § 18, eff. July 1, 2010.

§ 23. Enforcement of open meeting law; complaints; hearing; civil action

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

(1) compel immediate and future compliance with the open meeting law;

(2) compel attendance at a training session authorized by the attorney general;

(3) nullify in whole or in part any action taken at the meeting;

(4) impose a civil penalty upon the public body of not more than $1,000 for each intentional violation;

(5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;

(6) compel that minutes, records or other materials be made public; or

(7) prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more regis-

tered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (c).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth. Added by St.2009, c. 28, § 18, eff. July 1, 2010. Amended by St.2010, c. 454, § 19, eff. Jan. 14, 2011.

§ 24. Investigation by attorney general of violations of open meeting law

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary mate-

rial to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

Added by St.2009, c. 28, § 18, eff. July 1, 2010.

§ 25. Authority of attorney general to promulgate rules and regulations, letter rulings and advisory opinions

(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.

(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

Added by St.2009, c. 28, § 18, eff. July 1, 2010.

CHAPTER 30B

UNIFORM PROCUREMENT ACT

Chapter 30B of the General Laws was added by St.1989, c. 687, § 3.

Section

1. Application of chapter.
2. Definitions.
3. Procurement contracts; files.
4. Submission of quotations.
5. Competitive sealed bidding procedures.
6. Competitive sealed proposals; requests for proposals; additional evaluation criteria.
6A. Utilization of reverse auctions for the acquisition of supplies and services.
7. Sole source procurements.
8. Emergency procurements.
9. Cancellation of invitation for bids; rejection of bids or proposals.
10. Certification of good faith.
11. Splitting of procurements.
12. Term of contract; information to be included in solicitation; cancellation of contract.
13. Increase of services or supplies specified in contract.

Section

13A. Recycling or composting contracts; modifications and amendments.
14. Specification requirements; proprietary supply or service and sole source procurement.
15. Tangible supply; disposition.
16. Real property; disposition or acquisition.
17. Writing requirement; invalidation of contracts; forfeiture; civil actions.
18. Sheltered market programs.
19. Delegation of procurement officer's powers and duties.
20. Preference for products of agriculture grown or produced using products grown in commonwealth; governmental bodies.
21. Repealed.
22. Cooperative purchasing agreements between public procurement units or public procurement unit and external procurement activity.
23. Cooperative purchasing agreements between public procurement units or public procurement unit and external procurement activity.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Application of chapter

(a) This chapter shall apply to every contract for the procurement of supplies, services or real property and for disposing of supplies or real property by a governmental body as defined herein.

(b) This chapter shall not apply to:

(1) a contract subject to the provisions of section thirty-nine M of chapter thirty, section 11C or section 11*I* of chapter 25A or sections forty-four A to forty-four J, inclusive, of chapter one hundred and forty-nine;

(2) a contract subject to the provisions of sections thirty-eight A½ to thirty-eight *O*, inclusive, of chapter seven;

(3) an intergovernmental agreement subject to the provisions of section four A of chapter forty;

(4) a transaction with the commonwealth, except as pertains to subsection (i) of section 16;

(5) a contract for the purchase of materials, under specifications of the state department of highways, and at prices established by the department, pursuant to advertising and bidding for such purpose, in connection with work to be performed under the provisions of chapter eighty-one or chapter ninety;

(6) a contract for the advertising of required notices;

(7) an agreement between agencies, boards, commissions, authorities, departments or public instrumentalities of one city or town;

(8) an agreement for the provision of special education pursuant to chapter seventy-one B and regulations promulgated pursuant thereto;

(9) a contract to purchase supplies or services from, or to dispose of supplies to, any agency or instrumentality of the federal government, the commonwealth or any of its political subdivisions or any other state or political subdivision thereof;

(10) the issuance of bonds, notes or securities in accordance with procedures established by law;

(11) contracts and investments made in accordance with sections fifty-seven or fifty-seven A of chapter thirty-five or sections sixty-seven or sixty-seven A of chapter forty-four;

(12) a contract for the procurement of insurance or surety bonds, including an agreement subject to the provisions of sections one to sixteen, inclusive, of chapter forty M or the provisions of sections twenty-five E to twenty-five U, inclusive, of chapter one hundred and fifty-two;

(13) contracts for the services of expert witnesses for use in an adjudicatory proceeding or litigation or in anticipation thereof;

(14) any contracts or agreements entered into by a municipal gas or electric department governed by a municipal light board, as defined by section fifty-five of chapter one hundred and sixty-four or by a municipal light commission, as defined by section fifty-six A of said chapter one hundred and sixty-four; provided, however, that any such board or commission may accept the provisions of this chapter by a majority vote of its members;

(15) contracts with labor relations representatives, lawyers, or certified public accountants;

(16) contracts with physicians, dentists, and other health care individuals or persons including nurses, nurses' assistants, medical and laboratory technicians, health care providers including diagnosticians, social workers, psychiatric workers, and veterinarians;

(17) a contract for snow plowing by a governmental body;

(18) a contract or lease by a governmental body of its boat slips, berths, or moorings;

(19) a contract for retirement board services;

(20) a contract which is funded by proceeds derived from a gift to a governmental body or a trust established for the benefit of a governmental body;

(21) a contract for the towing and storage for motor vehicles;

(22) a contract to provide job-related training, educational or career development services to the employees of a governmental body;

(23) a contract pursuant to which a governmental body obtains services from a bank, as defined in section one of chapter one hundred and sixty-seven, subject to the maintenance of a compensating balance;

(24) a contract for ambulance service by a governmental body;

(25) a contract to sell lease or acquire residential, institutional, industrial or commercial real property by a public or quasi-public economic development agency or urban renewal agency engaged in the development and disposition of said real property in accordance with a plan approved by the appropriate authorizing authority;

(26) a contract for the collection of delinquent taxes or for the services of a deputy tax collector;

(27) contracts or agreements entered into by a municipal hospital or a municipal department of health;

(28) contracts entered into by a governmental body on behalf of a hospital owned by such governmental body where such contract is funded by expenditures from an operations account, so-called, or a special account, established pursuant to a special act that is maintained for the benefit of and designated with the name of such hospital;

(29) any contracts, agreements or leases entered into by a municipal airport commission established under the provisions of section fifty-one E of chapter ninety; provided, however, that such contracts, agreements or leases apply to aviation uses or the sale of aviation fuel;

(30) a contract for the collection, transportation, receipt, processing or disposal of solid waste, recyclable or compostable materials;

(31) an agreement for the purchase of photography services entered into by a public school;

(32) energy aggregation contracts entered into by a political subdivision of the commonwealth for energy or energy related services arranged or negotiated by such subdivision on behalf of its residents;

(32A) contracts with architects, engineers and related professionals;.

(33) energy contracts entered into by a city or town or group of cities or towns or political subdivisions of the commonwealth, for energy or energy related services; provided, however, that within 15 days of the signing of a contract for energy or energy related services by a city, town, political subdivision, or group of cities, towns or political subdivisions said city, town, political subdivision, or group of cities, towns or political subdivisions shall submit to the department of public utilities, the department of energy resources, and the office of the inspector general a copy of the contract and a report of the process used to execute the contract; provided, further, that for any such contract determined to contain confidential information under subclause (r) of section 7 of chapter 4, the governmental body shall instead maintain a record of the procurement processes and awards for 6 years after the date of the final payment. The governmental body shall make such records available to the inspector general upon request; provided, however, that the inspector general shall not disclose said information; or

(34) a contract made in accordance with section 5 of chapter 111C.

(c) This chapter shall be deemed to have been complied with on all purchases made under the provisions of sections twenty-two A and twenty-two B of chapter seven when one political subdivision, as defined in said section twenty-two A, acting on behalf of other political subdivisions, complies with the provisions of this chapter, or when purchases are made from a vendor pursuant to a contract with the commonwealth for the item or items being purchased.

(d) Where a procurement involves the expenditure of federal assistance or contract funds, the provisions of this chapter shall not apply to the extent that such provisions prevent compliance with mandatory provisions of federal law and regulations.

(e) Notwithstanding the provisions of any general or special law to the contrary, a governmental body may enter into a contract, in conformance with this chapter, for the construction and for services at a facility owned by a private party or parties, whether such facility will be located on public or private land for the disposal, recycling, composting or treatment of solid waste, sewage, septage or sludge without said contract being subject to the competitive bid process as set forth in sections thirty-eight A½ to thirty-eight *O*, inclusive, of chapter seven, section thirty-nine M of chapter thirty, or sections forty-four A to forty-four J, inclusive, of chapter one hundred and forty-nine; provided, however, that this subsection shall not apply to a procurement of proprietary environmental technology in accordance with subsection (5) of section forty-four A of chapter one hundred and forty-nine.

(f) This chapter shall be deemed to have been complied with on all purchases made from a vendor pursuant to a General Services Administration federal supply schedule that is available for use by governmental bodies.

Added by St.1989, c. 687, § 3. Amended by St.1991, c. 138, §§ 110 to 112; St.1991, c. 404; St.1991, c. 495, § 13; St.1991, c. 552, § 20; St.1992, c. 153, §§ 11, 12; St.1992, c. 286, §§ 105 to 109; St.1994, c. 180; St.1995, c. 131, § 1; St.1996, c. 450, §§ 80, 81; St.1997, c. 164, §§ 57, 58; St.2000, c. 54, § 2; St.2000, c. 159, § 65; St.2006, c. 11, § 3, eff. Feb. 3, 2006; St.2008, c. 169, §§ 46, 47, eff. July 2, 2008; St.2008, c. 445, § 2, eff. Mar. 30, 2009; St.2009, c. 25, §§ 40, 41, eff. July 1, 2009; St.2010, c. 188, §§ 4 to 6, eff. July 27, 2010.

§ 2. Definitions

As used in this chapter the following words shall, unless the context requires otherwise, have the following meanings:—

"Architect and engineer", (i) a person performing professional services of an architectural or engineering nature, as defined by law, which are required to be performed or approved by a person licensed, registered or certified to provide such services as described herein; (ii) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, investigations, inspections, tests, evaluations, consultations, program management, value engineering, construction, alteration, or repair of real property; and (iii) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions and individuals in their employ may logically or justifiably perform, including studies, investigations, surveying and mapping, soil tests, construction phase services, drawing reviews, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, soils engineering, cost estimates or programs; preparation of drawings, plans, or specifications, supervision or administration of a construction contract, construction management or scheduling, preparation of operation and maintenance manuals and other related services.

"Bid", a written offer to provide a supply or service at a stated price submitted in response to an invitation for bids.

"Chief procurement officer", the purchasing agent appointed pursuant to section one hundred and three of chapter forty-one, or as to any city or town which has not accepted said section, an individual duly appointed in a city having a city manager, by the city manager, in a town having a town manager, by the town manager, in any other town, by the selectmen, or, in any city or town otherwise providing by charter or local by-law for the appointment of a chief procurement officer, in accordance with such charter or local by-law, to procure all supplies and services for the city or town and every governmental body thereof; an individual duly appointed in a district by the prudential committee, if any, otherwise the commissioners to procure all supplies and services for the district; an individual duly appointed in a regional school dis-

trict by the regional school district committee to procure all supplies and services for the regional school district; an individual duly appointed in a county having a county executive, by the county executive, or in any other county, by the commission, to procure all supplies and services for the county and every governmental body thereof; or an individual duly appointed by the governing board of an authority or other governmental body to procure supplies and services for the authority or governmental body.

"Contract", all types of agreement for the procurement or disposal of supplies or services, regardless of what the parties may call the agreement.

"Contractor", a person having a contract with the governmental body.

"Cooperative purchasing", procurement conducted by, or on behalf of, more than 1 public procurement unit or by a public procurement unit with an external procurement activity.

"Electronic bidding", the electronic solicitation and receipt of offers to contract for supplies and services; provided, however, that offers may be accepted and contracts may be entered into by use of electronic bidding.

"Employment agreement", any agreement between a governmental body and an individual pursuant to which (1) the governmental body withholds or is required to withhold taxes on the individual's wages pursuant to the Internal Revenue Code or chapter sixty-two B; or (2) the governmental body and the individual stand under common law rules in the legal relationship of employer and employee.

"External procurement activity", (a) a public agency not located in the commonwealth which would qualify as a public procurement unit; (b) buying by the United States government.

"Governmental body", a city, town, district, regional school district, county, or agency, board, commission, authority, department or instrumentality of a city, town, district, regional school district or county.

"Grant agreement", an agreement between a governmental body and an individual or nonprofit entity the purpose of which is to carry out a public purpose of support or stimulation instead of procuring supplies or services for the benefit or use of the governmental body.

"Invitation for bids", the documents utilized for the soliciting of bids, including documents attached or incorporated by reference.

"Labor relations representative", a person designated to represent a public employer and act in its interest in dealing with public employees pursuant to chapter one hundred and fifty E.

"Local public procurement unit", a political subdivision or unit thereof which expends public funds for the procurement of supplies.

"Majority vote", as to any action by or on behalf of a county or instrumentality of the county, a simple majority of the commission; a city, town, or district, a majority vote as defined in section one of chapter forty-four; a regional school district, an affirmative vote by two-thirds of the members of the regional district school committee; or a housing authority, a simple majority of its members.

"Minor informalities", minor deviations, insignificant mistakes, and matters of form rather than substance of the bid, proposal, or contract document which can be waived or corrected without prejudice to other offerors, potential offerors, or the governmental body.

"Person", any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals.

"Procurement", buying, purchasing, renting, leasing, or otherwise acquiring a supply or service, and all functions that pertain to the obtaining of a supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Procurement officer", an individual duly authorized pursuant to law, charter, or local by-law to procure a supply or service for a governmental body or to dispose of a supply, including an individual duly delegated to take any action in connection with a procurement, and further including any member of a board, committee, commission, or other body who participates in a procurement.

"Proposal", a written offer to provide a supply or service at a stated price submitted in response to a request for proposals.

"Public procurement unit", a local public procurement unit or a state public procurement unit.

"Purchase description", the words used in a solicitation to describe the supplies or services to be

purchased, including specifications attached to or incorporated by reference into the solicitation.

"Related professionals", professionals engaged in professional services, including land surveying, landscape architecture, environmental science, planning and licensed site professionals, which are required to be performed or approved by a person licensed, registered or certified to provide such services as described herein, including professional services performed by contract that are associated with research, planning, development, design, investigations, inspections, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, value engineering, construction, alteration or repair of real property and such other professional services or incidental services which members of the related professions and individuals in their employ may logically or justifiably perform, including master plans, studies, surveys, soil tests, cost estimates or program, preparation of drawings, plans or specifications, supervision or administration of a construction contract, construction management or scheduling, conceptual designs, plans and specifications, construction phase services, soils engineering, drawing reviews, cost estimating, preparation of operation and maintenance manuals and other related services; provided, however, that nothing herein shall be construed to constitute regulation or oversight of any designated firms or identified professional services.

"Request for proposals", the documents utilized for soliciting proposals, including documents attached or incorporated by reference.

"Reverse auction", an internet-based process used to buy supplies and services whereby the sellers of the supplies or services being auctioned anonymously bid against each other until time expires and until the governmental body determines from which sellers it will buy based on the pricing obtained during the process.

"Responsible bidder or offeror", a person who has the capability to perform fully the contract requirements, and the integrity and reliability which assures good faith performance.

"Responsive bidder or offeror", a person who has submitted a bid or proposal which conforms in all respects to the invitation for bids or request for proposals.

"Services", the furnishing of labor, time, or effort by a contractor, not involving the furnishing of a specific end product other than reports. This term shall not include employment agreements, collective bargaining agreements, or grant agreements.

"Sound business practices", ensuring the receipt of favorable prices by periodically soliciting price lists or quotes.

"State public procurement unit", the offices of the chief procurement officers and any other purchasing agency of the commonwealth or any other state.

"Supplies", all property, other than real property, including equipment, materials, printing, and insurance and further including services incidental to the delivery, conveyance and installation of such property.

Added by St.1989, c. 687, § 3. Amended by St.2000, c. 159, § 66; St.2009, c. 25, §§ 42 to 44, eff. July 1, 2009; St.2010, c. 188, §§ 7 to 12, eff. July 27, 2010.

§ 3. Procurement contracts; files

A procurement officer who awards a contract in the amount of five thousand dollars or more shall maintain a file on each such contract and shall include in such file a copy of all written documents required by this chapter. Written documents required by this chapter shall be retained by the governmental body for at least six years from the date of final payment under the contract. Except as provided by paragraph (d) of section six, the records shall be open to public inspection.

Added by St.1989, c. 687, § 3.

§ 4. Submission of quotations

(a) Except as permitted pursuant to this section and section seven, for the procurement of a supply or service in the amount of $5,000 or greater, but less than $25,000, a procurement officer shall seek written or oral quotations from no fewer than three persons customarily providing such supply or service. The procurement officer shall record the names and addresses of all persons from whom quotations were sought, the names of the persons submitting quotations and the date and amount of each quotation. A governmental body may require that procurements in amounts of less than $25,000 be based on written quotations or be subject to the provisions of section five.

(b) The procurement officer shall award the contract to the responsible person offering the needed quality of supply or service at the lowest quotation.

(c) A procurement in the amount of less than $5,000 shall be obtained through the exercise of sound business practices.

(d) A procurement officer, who follows sound business practices, may award contracts which include individual purchases of less than $25,000 to Massachusetts farm operations for the procurement of products of agriculture as defined in section 1A of chapter 128 including, but not limited to, fruits, vegetables, eggs, dairy products, meats, crops, horticultural products and products processed into value added products, that are grown or produced using products grown in the commonwealth as well as fish, seafood and other aquatic products, without seeking quotations as required under subsection (a).

Added by St.1989, c. 687, § 3. Amended by St.2000, c. 159, §§ 67 to 70; St.2006, c. 123, §§ 32, 33, eff. June 24, 2006; St.2010, c. 188, § 13, eff. July 27, 2010; St.2010, c. 197, § 3, eff. Oct. 28, 2010.

§ 5. Competitive sealed bidding procedures

(a) Except as permitted under section six or section eight, award of procurement contracts in the amount of $25,000 or more, other than contracts for the procurement of real property, shall conform to the competitive sealed bidding procedures set forth in this section.

(b) A procurement officer shall issue an invitation for bids for a procurement contract. The invitation for bids shall include:

(1) the time and date for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the governmental body;

(2) the purchase description and all evaluation criteria to be utilized pursuant to paragraph (e); and

(3) all contractual terms and conditions applicable to the procurement.

The invitation for bids may incorporate documents by reference; provided, however, that the invitation for bids specifies where prospective bidders may obtain the documents. The procurement officer shall make copies of the invitation for bids available to all persons on an equal basis.

(c) The procurement officer shall give public notice of the invitation for bids a reasonable time prior to the date for the opening of bids. The notice shall:

(1) indicate where, when and for how long invitations for bids may be obtained;

(2) describe the supply or service desired, and reserve the right of the governmental body to reject any or all bids;

(3) if award of the contract is subject to the approval of any board, committee, commission or other body, so state and identify each such body;

(4) remain posted, for at least two weeks, in a conspicuous place in or near the offices of the governmental body until the time specified in the invitation for bids; and

(5) be published at least once, not less than two weeks prior to the time specified for the receipt of bids, in a newspaper of general circulation within the area served by the governmental body.

For procurements in the amount of twenty-five thousand dollars or more, or such larger amount as may be established by the state secretary, the procurement officer shall also place the notice in any publication established by the state secretary for the advertisement of such procurements.

The procurement officer may distribute copies of the notice to prospective bidders, and may compile and maintain lists of prospective bidders to which notices may be sent.

A city or town which regularly publishes a periodical listing municipal contracting opportunities may apply to the state secretary for permission to utilize such periodical in lieu of advertising in a newspaper of general circulation. The state secretary, after notice and an opportunity for interested persons to present their views, may grant, renew, or revoke permission for said city or town to utilize such periodical in lieu of newspaper advertising for procurements or classes of procurements not to exceed such amount as may be established by the state secretary. Such permission shall remain in effect for a specified period not to exceed three years. In granting, renewing, or revoking such permission, the state secretary shall consider whether the periodical provides prospective contractors with reasonable notice of contracting opportunities, taking account of such factors as circulation, accessibility, reliability, and cost of the periodical. Such permission and any renewal or revocation thereof shall be in writing filed with the city or town clerk, the inspector general, and the state secretary.

(d) The procurement officer shall open bids publicly either (1) at a meeting subject to the provi-

sions of section eleven A 1/2 of chapter thirty A, section nine G of chapter thirty-four or section twenty-three B of chapter thirty-nine, in the presence of a quorum, and the names of all bidders and the amounts of their bids shall be entered in the minutes, or (2) in the presence of one or more witnesses, and the procurement officer and said witnesses shall sign a statement under penalties of perjury listing the names of all bidders and the amounts of their bids and declaring that said list is a complete and accurate list of bids opened in the presence of said witnesses. Such minutes or statement, or a certified copy thereof, shall be filed with the contract.

(e) The procurement officer shall evaluate a bid based solely on the requirements and criteria set forth in the invitation for bids. Such criteria shall include the standards by which the procurement officer will determine acceptability as to quality, workmanship, results of inspections and tests, and suitability for a particular purpose.

(f) The procurement officer shall unconditionally accept a bid without alteration or correction, except as provided in this paragraph. A bidder may correct, modify, or withdraw a bid by written notice received in the office designated in the invitation for bids prior to the time and date set for the bid opening. After bid opening, a bidder may not change the price or any other provision of the bid in a manner prejudicial to the interests of the governmental body or fair competition. The procurement officer shall waive minor informalities or allow the bidder to correct them. If a mistake and the intended bid are clearly evident on the face of the bid document, the procurement officer shall correct the mistake to reflect the intended correct bid and so notify the bidder in writing, and the bidder may not withdraw the bid. A bidder may withdraw a bid if a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident.

(g) The procurement officer shall award the contract to the lowest responsible and responsive bidder. A contract requiring payment to the governmental body of a net monetary amount shall be awarded to the highest responsible and responsive bidder. The procurement officer shall award the contract by written notice to the selected bidder within the time for acceptance specified in the invitation for bids. The time for acceptance may be extended for up to 45 days by mutual agreement between the governmental body and the apparent lowest responsible and responsive bidder or, for a contract requiring payment to the governmental body, by mutual agreement between the governmental body and the highest apparent responsible and responsive bidder.

Added by St.1989, c. 687, § 3. Amended by St.1996, c. 450, § 82; St.2000, c. 159, §§ 71, 72.

§ 6. Competitive sealed proposals; requests for proposals; additional evaluation criteria

(a) A chief procurement officer may enter into procurement contracts in the amount of $25,000 or more utilizing competitive sealed proposals, in accordance with the provisions of this section. The chief procurement officer shall not solicit competitive sealed proposals unless he has determined in writing that selection of the most advantageous offer requires comparative judgments of factors in addition to price, specifying the reasons for his determination.

(b) The chief procurement officer shall solicit proposals through a request for proposals. The request for proposals shall include:

(1) the time and date for receipt of proposals, the address of the office to which the proposals are to be delivered, the maximum time for proposal acceptance by the governmental body;

(2) the purchase description and all evaluation criteria that will be utilized pursuant to paragraph (e); and

(3) all contractual terms and conditions applicable to the procurement provided that the contract may incorporate by reference a plan submitted by the selected offeror for providing the required supplies or services.

The request for proposals may incorporate documents by reference; provided, however, that the request for proposals specifies where prospective offerors may obtain the documents. The request for proposals shall provide for the separate submission of price, and shall indicate when and how the offerors shall submit the price. The chief procurement officer shall make copies of the request for proposals available to all persons on an equal basis.

(c) Public notice of the request for proposals shall conform to the procedures set forth in paragraph (c) of section five.

(d) The chief procurement officer shall not open the proposals publicly, but shall open them in the presence of one or more witnesses at the time specified in the request for proposals. Notwith-

standing the provisions of section seven of chapter four, until the completion of the evaluations, or until the time for acceptance specified in the request for proposals, whichever occurs earlier, the contents of the proposals shall remain confidential and shall not be disclosed to competing offerors. At the opening of proposals the chief procurement officer shall prepare a register of proposals which shall include the name of each offeror and the number of modifications, if any, received. The register of proposals shall be open for public inspection. The chief procurement officer may open the price proposals at a later time, and shall open the price proposals so as to avoid disclosure to the individuals evaluating the proposals on the basis of criteria other than price.

(e) The chief procurement officer shall designate the individual or individuals responsible for the evaluation of the proposals on the basis of criteria other than price. The designated individuals shall prepare their evaluations based solely on the criteria set forth in the request for proposals. Such criteria shall include all standards by which acceptability will be determined as to quality, workmanship, results of inspections and tests, and suitability for a particular purpose, and shall also include all other performance measures that will be utilized. The evaluations shall specify in writing:

(1) for each evaluation criterion, a rating of each proposal as highly advantageous, advantageous, not advantageous, or unacceptable, and the reasons for the rating;

(2) a composite rating for each proposal, and the reasons for the rating; and

(3) revisions, if any, to each proposed plan for providing the required supplies or services which should be obtained by negotiation prior to awarding the contract to the offeror of the proposal.

(f) A proposal may be corrected, modified or withdrawn to the extent provided in paragraph (f) of section five.

(g) The chief procurement officer shall determine the most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals. The chief procurement officer shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The parties may extend the time for acceptance by mutual agreement. The chief procurement officer may condition an award on successful negotiation of the revisions specified in the evaluation, and shall explain in writing the reasons for omitting any such revision from a plan incorporated by reference in the contract.

(h) If the chief procurement officer awards the contract to an offeror who did not submit the lowest price, the chief procurement officer shall explain the reasons for the award in writing, specifying in reasonable detail the basis for determining that the quality of supplies or services under the contract will not exceed the governmental body's actual needs.

(i) If a contract requiring payment to the governmental body of a net monetary sum is awarded to an offeror who did not submit the highest price, the chief procurement officer shall explain the reasons for the award in writing as set forth in paragraph (h).

(j) Notwithstanding the provisions of this section, with respect to contracts for the recycling or composting of solid waste or the treatment, composting or disposal of sewage, septage or sludge at a facility to be owned and constructed by a private party or parties whether such facility will be, located on public or private land, the request for proposals may include proposed contractual terms and conditions to be incorporated into the contract, some of which may be deemed mandatory or non-negotiable, provided that the request for proposals may request proposals or offer options for fulfillment of other contractual terms. The chief procurement officer shall make a preliminary determination of the most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals. The chief procurement officer may negotiate all terms of the contract not deemed mandatory or non-negotiable with such offeror. If after negotiation with such offeror, the chief procurement officer determines that it is in the best interests of the governmental body, the chief procurement officer may determine the proposal which is the next most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals, and may negotiate all terms of the contract with such offeror. The chief procurement officer shall award the contract to the most advantageous proposal from a responsible and responsive offeror taking into consideration price, the evaluated criteria set forth in the request for proposals, and the terms of

the negotiated contract. The chief procurement officer shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The time for acceptance may be extended for up to 45 days by mutual agreement between the governmental body and the responsible and responsive offeror offering the most advantageous proposal as determined by the chief procurement officer.

(k) Notwithstanding the provisions of this section, with respect to contracts for energy-related services entered into by a city or town or group of cities or towns, the requests for proposals may include proposed contractual terms and conditions to be incorporated into the contract, some of which may be deemed mandatory or non-negotiable; provided, however, that the request for proposals may request proposals or offer options for fulfillment of other contractual terms. The chief procurement officer shall make a preliminary determination of the most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in a request for proposals. The chief procurement officer may negotiate all terms of the contract not deemed mandatory or non-negotiable with such offeror. If after negotiation with such offeror the chief procurement officer determines that it is in the best interest of the governmental body, the chief procurement officer may determine the proposal which is the next most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals, and may negotiate all terms of the contract with such offeror. The chief procurement officer shall award the contract to the most advantageous proposal from a responsible and responsive offeror taking into consideration price, the evaluated criteria set forth in the request for proposals, and the terms of the negotiated contract. The chief procurement officer shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The parties may extend the time for acceptance by mutual agreement.

Added by St.1989, c. 687, § 3. Amended by St.1992, c. 153, § 13; St.1997, c. 164, § 59; St.2000, c. 159, §§ 73, 74.

§ 6A. Utilization of reverse auctions for the acquisition of supplies and services

(a) A chief procurement officer may enter into procurement contracts for $25,000 or more, utilizing reverse auctions for the acquisition of supplies and services. The reverse auction process shall include a specification of an opening date and time when real-time electronic bids shall be accepted and shall provide that the procedure remain open until the designated closing date and time.

(b) All bids on reverse auctions shall be posted electronically on the internet and updated on a real-time basis and shall allow for registered bidders to lower the price of their bid below the lowest bid on the internet.

(c) The chief procurement officer shall require vendors to register before the reverse auction opening date and time and, as part of the registration, agree to any terms and conditions and other requirements of the solicitation.

(d) Any mechanism including, but not limited to, software, developed by the operational services division to conduct reverse auctions by the commonwealth, shall provide for the utilization of that mechanism by municipalities.

(e) The operational services division may assess a municipality utilizing the reverse auction mechanism a reasonable fee, calculated to compensate for any increased cost attributable to such utilization, which shall be credited to the General Fund.

(f) Reverse auctions shall not be subject to clause (1) of subsection (b) or subsection (d) of section 5 but shall be subject to all other provisions of said section 5.

Added by St.2010, c. 188, § 14, eff. July 27, 2010.

§ 7. Sole source procurements

(a) A procurement officer may award a contract in an amount of less than $25,000 or any contract for the procurement of library books, school textbooks, educational programs, educational courses, educational curricula in any media including educational software, newspapers, serials, periodicals, audiovisual materials or software maintenance without competition when, after reasonable investigation, the procurement officer determines in writing that only one practicable source for the required supply or service exists. The procurement officer shall procure a proprietary item by competition if more than one potential bidder or offeror for that item exists.

(b) The procurement officer shall record all sole source procurements, specifying each contractor's name, the amount and type of each contract, a listing of supplies or services procured under each

contract, and the basis of the determination that the contractor was the only practicable source for the required supply or service.

(c) A procurement officer may procure without competition water, gas, electricity, sewer or telephone services from a regulated industry company as defined in section three of chapter twenty-five if the procurement officer certifies in writing that only one practicable source exists.

Added by St.1989, c. 687, § 3. Amended by St.1998, c. 172; St.1998, c. 463, § 34; St.2000, c. 128, § 1; St.2000, c. 159, § 75.

§ 8. Emergency procurements

Whenever the time required to comply with a requirement of this chapter would endanger the health or safety of the people or their property a procurement officer may make an emergency procurement without following that requirement. An emergency procurement shall be limited to only supplies or services necessary to meet the emergency and shall conform to the requirements of this chapter to the extent practicable under the circumstances. The procurement officer shall make a record of each emergency as soon after the procurement as practicable, specifying each contractor's name, the amount and the type of each contract, a listing of the supply or service provided under each contract, and the basis for determining the need for an emergency procurement.

The procurement officer shall submit a copy of this record at the earliest possible time to the state secretary for placement in any publication established by the state secretary for the advertisement of procurements.

Added by St.1989, c. 687, § 3.

§ 9. Cancellation of invitation for bids; rejection of bids or proposals

The procurement officer may cancel an invitation for bids, a request for proposals, or other solicitation, or may reject in whole or in part any and all bids or proposals when the procurement officer determines that cancellation or rejection serves the best interests of the governmental body. The procurement officer shall state in writing the reason for a cancellation or rejection.

Added by St.1989, c. 687, § 3.

§ 10. Certification of good faith

A person submitting a bid or a proposal for the procurement or disposal of supplies or services to any governmental body shall certify in writing, on the bid or proposal, as follows:

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

_____

(Signature of individual submitting bid or proposal)

_____

(Name of business)

Added by St.1989, c. 687, § 3. Amended by St.1996, c. 450, § 83.

§ 11. Splitting of procurements

No person shall cause or conspire to cause the splitting or division of any procurement, specification, invitation for bids, request for proposals, proposal, solicitation, or quotation for the purpose of evading a requirement of this chapter.

Added by St.1989, c. 687, § 3.

§ 12. Term of contract; information to be included in solicitation; cancellation of contract

(a) Unless otherwise provided by law and subject to paragraph (b), a governmental body may enter into a contract for any period of time which serves the best interests of the governmental body; provided, however, that the procurement officer shall include in the solicitation the term of the contract and conditions of renewal, extension or purchase, if any. The procurement officer shall not enter into a contract unless funds are available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal years shall depend on the availability and appropriation of funds.

(b) Unless authorized by majority vote, a procurement officer shall not award a contract for a term exceeding three years, including any renewal, extension, or option. Such authorization may apply to a single contract or to any number or types of contracts, and may specify a uniform limit or different limits on the duration of any such contracts.

(c) The invitation for bids, request for proposals, or other solicitation of any contract for a term exceeding one year, including a renewal, extension or option, shall state, in addition to the other information required by this chapter:

(1) the amount of supplies or services required for the proposed contract period, and whether such amount is the actual amount required or an estimate;

(2) that the bidder or offeror shall give a unit price for each supply or service, and that the unit price shall remain the same throughout the contract, except to the extent that the solicitation and resulting contract provides for price adjustments;

(3) that the procurement officer shall cancel the contract if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the first year;

(4) whether the bidder or offeror shall submit prices for:

(i) the first fiscal year only;

(ii) the entire time of performance only; or

(iii) both the first fiscal year and the entire time of performance; and

(5) how the award will be determined, including, if the contractor submits prices for the first fiscal year and the entire time of performance, how the prices will be compared.

When a contract is to contain an option for renewal, extension, or purchase, the solicitation shall include notice of the provision. The governmental body shall retain sole discretion in exercising the option, and no exercise of an option shall be subject to agreement or acceptance by the contractor.

(d) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the procurement officer shall cancel the contract.

(e) The governmental body shall not exercise an option for renewal, extension or purchase unless the procurement officer, after reasonable investigation of costs and benefits, has determined in writing that the exercise of the option is more advantageous than alternate means of procuring comparable supplies or services.

(f) Notwithstanding the provisions of paragraphs (a), (b), clause (3) of paragraph (c) and paragraph (d) and further notwithstanding any contrary provision of any law or the provisions of any charter, a city or town may, in a contract for the disposal of its garbage, refuse, and offal or treatment or disposal of sewage, septage or sludge, agree that said city or town shall not be exempt from liability on such contract; provided, however, that such disposal shall be in a sanitary manner approved by the department of environmental protection; provided further, that the contract, including any renewal, extension, or option, shall be for a period not exceeding twenty years; and provided, further, that such contract has been authorized by majority vote.

Added by St.1989, c. 687, § 3. Amended by St.1992, c. 153, § 14; St.1992, c. 286, § 110; St.1996, c. 450, §§ 84, 85; St.2003, c. 46, § 11, eff. July 31, 2003.

§ 13. Increase of services or supplies specified in contract

The governmental body may increase the quantity of supplies or services or both specified in a contract provided:

(1) the unit prices remain the same or less;

(2) the procurement officer has specified in writing that an increase is necessary to fulfill the actual needs of the governmental body and is more economical and practical than awarding another contract;

(3) the parties agree to the increase in writing; and

(4) the increase in the total contract price does not exceed 25 per cent but a contract for the purchase of gasoline, special fuel, fuel oil, road salt or other ice and snow control supplies shall not be subject to this limit; and

(5) the governmental body, with the agreement of the contractor, may reduce the unit price for supplies or services or both specified in a contract to be paid by the governmental body at any time during the term of the contract or when an option to renew, extend or purchase is exercised.

Added by St.1989, c. 687, § 3. Amended by St.2000, c. 159, § 76.

§ 13A. Recycling or composting contracts; modifications and amendments

With respect to contracts for the recycling or composting of solid waste or the treatment, composting or disposal of sewage, septage or sludge authorized under the provisions of subsection (e) of section one, the governmental body may negoti-

ate modifications and amendments to contracts for recycling services involving the addition of materials to be collected or processed, the deletion of materials to be collected or processed, the change in specifications with respect to materials to be collected or processed, and any price adjustments related to such modifications and amendments, where the contract is for a term of two years, or more, and where such changes are based upon changes in market conditions since the commencement of the contract, provided:

(1) after reasonable investigation of costs and benefits, the chief procurement officer has determined in writing that such modification is in the best interest of the governmental body; and

(2) where the modification involves the addition of materials and an increase in price to the governmental body, the chief procurement officer has determined in writing that the amendment is more advantageous than alternate means of procuring such services.

Added by St.1992, c. 153, § 15.

§ 14. Specification requirements; proprietary supply or service and sole source procurement

Unless no other manner of description suffices, and the procurement officer so determines in writing, setting forth the basis for the determination, all specifications shall be written in a manner which describes the requirements to be met without having the effect of exclusively requiring a proprietary supply or service, or a procurement from a sole source.

Added by St.1989, c. 687, § 3.

§ 15. Tangible supply; disposition

(a) A governmental body shall dispose of a tangible supply, no longer useful to the governmental body but having resale or salvage value, in accordance with this section. This section does not apply to the disposal of real property.

(b) The governmental body shall offer such supply through competitive sealed bids, public auction, or established markets.

(c) Notice of sale by bid or auction shall conform with the procedures set forth in paragraph (c) of section five. The notice shall indicate the supply offered for sale, designate the location and method for inspection of such supply, state the terms and conditions of sale including the place, date and time for the bid opening or auction, and state that the governmental body retains the right to reject any and all bids.

(d) If the governmental body rejects the bid of the highest responsive bidder, the governmental body may:

(1) negotiate a sale of such supply so long as the negotiated sale price is higher than the bid price; or

(2) resolicit bids.

(e) A procurement officer may trade-in a supply listed for trade-in in the invitation for bids or request for proposals.

(f) For a supply with an estimated net value of less than $5,000, the procurement officer shall dispose of such supply using written procedures approved by the governmental body.

(g) Notwithstanding any other requirement of this section, a governmental body may by majority vote, unless otherwise prohibited by law, dispose of a tangible supply no longer useful to the governmental body but having resale or salvage value, at less than the fair market value to a charitable organization which has received a tax exemption from the United States by reason of its charitable nature.

Added by St.1989, c. 687, § 3. Amended by St.2000, c. 159, § 77.

§ 16. Real property; disposition or acquisition

(a) If a governmental body duly authorized by general or special law to engage in such transaction determines that it shall rent, convey, or otherwise dispose of real property, the governmental body shall declare the property available for disposition and shall specify the restrictions, if any, that it will place on the subsequent use of the property.

(b) The governmental body shall determine the value of the property through procedures customarily accepted by the appraising profession as valid.

(c) A governmental body shall solicit proposals prior to:

(1) acquiring by purchase or rental real property or an interest therein from any person at a cost exceeding twenty-five thousand dollars; or

(2) disposing of, by sale or rental to any person, real property or any interest therein, determined in accordance with paragraph (b) to exceed twenty-five thousand dollars in value.

(d) The governmental body shall place an advertisement inviting the submission of proposals in a newspaper with a circulation in the locality sufficient to inform the people of the affected locality. The governmental body shall publish the advertisement at least once a week for two consecutive weeks. The last publication shall occur at least eight days preceding the day for opening proposals. The advertisement shall specify the geographical area, terms and requirements of the proposed transaction, and the time and place for the submission of proposals. In the case of the acquisition or disposition of more than twenty-five hundred square feet of real property, the governmental body shall also cause such advertisement to be published, at least thirty days before the opening of proposals, in the central register published by the state secretary pursuant to section twenty A of chapter nine.

(e) The governmental body may shorten or waive the advertising requirement if:

(1) the governmental body determines that an emergency exists and the time required to comply with the requirements would endanger the health or safety of the people or their property; provided, however, that the governmental body shall state the reasons for declaring the emergency in the central register at the earliest opportunity; or

(2) in the case of a proposed acquisition, the governmental body determines in writing that advertising will not benefit the governmental body's interest because of the unique qualities or location of the property needed. The determination shall specify the manner in which the property proposed for acquisition satisfies the unique requirements. The governmental body shall publish the determination and the reasons for the determination, along with the names of the parties having a beneficial interest in the property pursuant to section forty J of chapter seven, the location and size of the property, and the proposed purchase price or rental terms, in the central register not less than thirty days before the governmental body executes a binding agreement to acquire the property.

(f) Proposals shall be opened publicly at the time and place designated in the advertisement. The governmental body shall submit the name of the person selected as party to a real property transaction, and the amount of the transaction, to the state secretary for publication in the central register.

(g) If the governmental body decides to dispose of property at a price less than the value as determined pursuant to paragraph (b), the governmental body shall publish notice of its decision in the central register, explaining the reasons for its decision and disclosing the difference between such value and the price to be received.

(h) This section shall not apply to the rental of residential property to qualified tenants by a housing authority or a community development authority.

(i) Acquisitions or dispositions of real property or any interest therein pursuant to this section between governmental bodies and the federal government, the commonwealth or any of its political subdivisions or another state or political subdivision thereof shall be subject to subsections (a), (b) and (g).

Added by St.1989, c. 687, § 3. Amended by St.1995, c. 131, § 2; St.1996, c. 450, § 86; St.2000, c. 159, § 78.

§ 17. Writing requirement; invalidation of contracts; forfeiture; civil actions

(a) All contracts in the amount of five thousand dollars or more shall be in writing, and the governmental body shall make no payment for a supply or service rendered prior to the execution of such contract.

(b) Subject to the provisions of section three A of chapter forty, a contract made in violation of this chapter shall not be valid, and the governmental body shall make no payment under such contract. Minor informalities shall not require invalidation of a contract.

(c) A person who causes or conspires with another to cause a contract to be solicited or awarded in violation of a provision of this chapter shall forfeit and pay to the appropriate governmental body a sum of not more than two thousand dollars for each violation. In addition, the person shall pay double the amount of damages sustained by the governmental body by reason of the violation, together with the costs of any action. If more than one person participates in the violation, the damages and costs may be apportioned among them.

(d) The inspector general shall have authority to institute a civil action to enforce paragraph (c) if authorized by the attorney general.

Added by St.1989, c. 687, § 3.

§ 18. Sheltered market programs

(a) For purposes of this section the following phrases shall have the following meanings:

"Disadvantaged vendor", any business beneficially owned by one or more minority persons in conformity with clauses (1) to (4), inclusive, of the definition of "Minority business" set forth in section forty N of chapter seven, and any business beneficially owned by one or more women as provided in the definition of "Women-owned business" set forth in said section 40N and any business beneficially owned by 1 or more veterans as provided in the definition of "veteran-owned business" as set forth in section 40N.

"Sheltered market program", a program under which certain contracts are designated by the chief procurement officer for procurement from one or more classes of disadvantaged vendors.

(b) When authorized by majority vote, a chief procurement officer may establish a sheltered market program in conformity with the requirements of this section. Such authorization may apply to a single contract or to any number or types of contracts, shall specify the class or classes of disadvantaged vendors to be included in the sheltered market program, and shall to the extent constitutionally required be based on findings that such program is a remedy for the present effects of past discrimination.

(c) A procurement officer shall not solicit or award a contract pursuant to a sheltered market program until the chief procurement officer, after notice and a public hearing, has approved written procedures for the operation of such program, has filed such procedures with the state office of minority and women business assistance and the secretary of state, and has published such procedures or a summary thereof in a newspaper of general circulation within the area served by the governmental body and in any publication established by the secretary of state for the advertisement of such notices.

Such written procedures shall, at a minimum, include:

(1) procedures for the certification of disadvantaged vendors, which procedures shall require the use of standardized application forms, the submission of applications sworn to under the penalties of perjury, the maintenance of certification records by the chief procurement officer or his designee, an opportunity for a business denied certification to be heard on such denial, the issuance of certificates valid for a period not longer than two years, notice and an opportunity to be heard prior to revocation of certificates, and a public information campaign to encourage certification; provided, however, that a governmental body's certification procedures may authorize participation in its sheltered market program by any eligible disadvantaged vendor duly certified under the sheltered market program of another governmental body or by the state office of minority and women business assistance;

(2) in the event the authorization required by paragraph (b) does not designate the specific contracts to which the sheltered market program applies, procedures for designating such contracts, which procedures shall (i) set forth criteria for designating contracts, (ii) require that each designation be in writing and based on written findings that the contract meets such criteria, and (iii) provide for an administrative review of the appropriateness of including the contract in the sheltered market program;

(3) procedures for ensuring effective competition among disadvantaged vendors for contracts within the sheltered market program, including procedures requiring (i) supplemental advertising in media serving disadvantaged communities, (ii) for the procurement of a supply or service in the amount of one thousand dollars but less than ten thousand dollars, the receipt of written or oral quotations from no fewer than three certified disadvantaged vendors customarily providing such supply or service; provided, however, that a quotation shall not be considered until the vendor has submitted to the procurement officer a copy of a valid certificate, and (iii) for the procurement of a supply or service in the amount of ten thousand dollars or more, the receipt of responsive bids or proposals from no fewer than three certified disadvantaged vendors; provided, however, that a bid or proposal shall not be considered unless accompanied by a copy of a valid certificate; and

(4) procedures for review and assessment of the sheltered market program, at least annually, based upon a detailed written report by the chief procurement officer or his designee, which report shall at a minimum set forth for the twelve months then ending (i) the number and dollar value of contracts awarded to disadvantaged vendors under the sheltered market program, (ii) the total number, the percentage, the total dollar value, and the percentage dollar value of contracts awarded by the governmental body to disadvantaged vendors eligible for participation in the sheltered market program, (iii) a description of other efforts undertaken by the governmental body to increase its contracting with disadvantaged vendors, and (iv) recommendations for continuing, modifying, or terminating the program.

A violation of any valid procedure adopted pursuant to this section shall constitute a violation of this chapter.

(d) Advertisements for a contract within the sheltered market program shall state that the contract will be awarded under a sheltered market program and shall specify the class or classes of disadvantaged vendors to which competition for the contract is limited.

(e) In no event shall a contract designated for inclusion in a sheltered market program be awarded on a sole source basis. If fewer than three responsive bids, proposals, or quotations are received, or if all bids, proposals, or quotations are rejected pursuant to section nine, the contract shall not be awarded under the sheltered market program.

(f) No contract shall be awarded under a sheltered market program for a term exceeding three years, including any renewal, extension, or option. No disadvantaged vendor shall be awarded a sheltered market program contract if at the time of award such vendor is a party to any other sheltered market program contract the term of which, including any renewal, extension, or option, has not expired. No disadvantaged vendor shall be awarded more than three sheltered market program contracts by one or more governmental bodies within any one-year period.

(g) Except as otherwise provided in this section, all procurements under a sheltered market program shall be undertaken in accordance with the provisions of this chapter.

Added by St.1989, c. 687, § 3. Amended by St.2003, c. 137, § 20, eff. Nov. 26, 2003.

§ 19. Delegation of procurement officer's powers and duties

Subject to the provisions of section one hundred and three of chapter forty-one, to the extent permitted by charter or local by-law in a city or town, or by written rules of the committee, commission or executive appointing the chief procurement officer in a district or county, a chief procurement officer may delegate his powers and duties in accordance with this section to one or more employees of the governmental body. A delegation shall be in writing, be signed by the chief procurement officer, and state the activity or function authorized and the duration of the delegation. A delegation may be in specific or general terms, may be limited to a particular procurement or class of procurements, and may be conditioned upon compliance with specified procedures. A delegation may be revoked or amended whenever the chief procurement officer determines that revocation or amendment is in the best interests of the governmental body. A delegation of powers or duties by a chief procurement officer and any revocation or amendment thereof shall not take effect until a copy of the same has been filed with the office of the inspector general.

Added by St.1989, c. 687, § 3.

§ 20. Preference for products of agriculture grown or produced using products grown in commonwealth; governmental bodies

(a) Notwithstanding any general or special law to the contrary and to the extent permitted by federal law, a governmental body may, by a majority vote, establish a preference for products of agriculture as defined in section 1A of chapter 128 including, but not limited to, fruits, vegetables, eggs, dairy products, meats, crops, horticultural products and products processed into value added products as part of a Massachusetts farm operation as well as fish, seafood, and other aquatic products.

(b) Wherever a governmental body by a majority vote establishes a preference for the procurement of such products of agriculture grown or produced using products grown in the commonwealth, the procurement officer responsible for procuring agricultural products on behalf of the governmental body shall effectuate such preference in: (i) advertising for bids, contracts or otherwise and making reasonable efforts to facilitate the purchase of such products of agriculture grown or produced using products grown in the commonwealth; and (ii) purchasing products of agriculture grown or produced using products grown in the commonwealth, unless the price of such goods exceeds, by more than 10 per cent, the price of agricultural products grown or produced outside of the commonwealth.

Added by St.2006, c. 123, § 34, eff. June 24, 2006.

§ 21. Repealed, 2010, 112, Sec. 6

§ 22. Cooperative purchasing agreements between public procurement units or public procurement unit and external procurement activity

A public procurement unit may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of supplies with public procurement units or external procurement activities in accordance with an agreement

entered into between the participants. The public procurement unit conducting the procurement of supplies shall do so in a manner that constitutes a full and open competition.

Added by St.2010, c. 188, § 15, eff. July 27, 2010.

§ 23. Cooperative purchasing agreements between public procurement units or public procurement unit and external procurement activity

A public procurement unit may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of supplies with public procurement units or external procurement activities in accordance with an agreement entered into between the participants. The public procurement unit conducting the procurement of supplies shall do so in a manner that constitutes a full and open competition.

Added by St.2010, c. 454, § 20, eff. Jan. 14, 2011.

CHAPTER 32

RETIREMENT SYSTEMS AND PENSIONS

Selected section

Section
99. Advance payments.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 99. Advance payments

The treasurer of any city, town or county which accepts this section may make advance payments in an amount not to exceed any retirement allowance actually due to employees of such city, town or county who are eligible for, and who have filed applications for, retirement, during such period as is necessary for the processing of such applications for retirement, and shall establish rules and regulations governing such payments.

This section shall take effect upon its acceptance in a city by vote of the city council, subject to the provisions of its charter; in a town by vote of the voters at a town meeting; and in a county by vote of the county commissioners.

Added by St.1959, c. 121.

CHAPTER 32B

CONTRIBUTORY GROUP GENERAL OR BLANKET INSURANCE FOR PERSONS IN THE SERVICE OF COUNTIES, CITIES, TOWNS AND DISTRICTS, AND THEIR DEPENDENTS

Selected sections

Section
1. Purpose of chapter.
2. Definitions.
2A. Traffic supervisors as employees.
2B. Reserve, permanent-intermittent or call firefighters as employees.
3. Purchase of group life, accidental death, etc., insurance policies; reinsurance agreements.
3A. Administrative services contract for payment of claims by political subdivision; claims trust fund; annual audit.
7. Premiums; withholding, contribution; direct payment.
7A. Contribution and withholding for premiums; subsidiary or additional rate; payments in lieu of withholding; acceptance of section.
8. Dividends, refunds and rate credits to inure to benefit of governmental unit.
8A. Dividends and refunds; deposit in employees' group insurance trust fund; administrative costs; effective date.
9. Policy provisions.
9A. Political subdivision; contribution for insurance premiums of retired employees.

Section
9E. Subsidiary or additional rate; payment by political subdivisions; premium payment by retired employee; acceptance of section.
10. Acceptance of chapter by county, city, town, municipality or district.
10A. Purchase of insurance by public authority following acceptance of chapter.
15. Insurance coverage for employees of governmental units; appropriation or expenditure of public funds for payment of premiums.
16. Optional insurance for services of health care organizations.
17. Election to continue insurance coverages; notice.
18. Medicare extension plans; mandatory transfer of retirees.
18A. Medicare extension plans; mandatory transfer of retirees.
19. Health carriers; contracts; public employee committees; agreements with public authorities; transfer of subscribers to commission.
20. Other Post Employment Benefits Liability Trust Fund; local option; funding schedule.

The section headings for the General Laws in this pamphlet have been editorially supplied.

St.1956, c. 730, § 1, an emergency act, approved Oct. 5, 1956, repealed Chapter 32B of the General Laws, consisting of §§ 1 to 14 and inserting in place thereof a new Chapter 32B, consisting of §§ 1 to 14.

DISPOSITION TABLE

Showing where the subject matter of Chapter 32B, stricken out by St.1956, c. 730, § 1, can be found in the new §§ 1 to 14 enacted thereby.

Former Section	New Section
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	—
12	—
13	—
14	13

§ 1. Purpose of chapter

The purpose of this chapter is to provide a plan of group life insurance, group accidental death and dismemberment insurance and group general or blanket hospital, surgical, medical, dental and other health insurance for certain persons in the service of counties, except Worcester county, cities, towns and districts and their dependents.

Added by St.1956, c. 730, § 1. Amended by St.1975, c. 806, § 1; St.1982, c. 615, § 3.

§ 2. Definitions

The following words and phrases as used in this chapter shall have the meanings as defined herein:

(a) "Appropriate public authority", as to a county, except Worcester county, the county commissioners; as to a city, the mayor; as to a town, the selectmen; as to a district, the governing board thereof and for the purposes of this chapter if a collective bargaining agreement is in place, as to a commonwealth charter school as defined by section 89 of chapter 71, the board of trustees and; as

to an education collaborative, as defined by section 4E of chapter 40, the board of directions.

(b) "Dependents", an employee's spouse, an employee's unmarried children under nineteen years of age, and any child nineteen years of age or over who is mentally or physically incapable of earning his own living, provided that any additional premium which may be required is paid for the coverage of such handicapped child. Said definition shall also include an unmarried child nineteen years of age or over who is a full-time student in an educational or vocational institution and whose program of education has not been substantially interrupted by full-time gainful employment excluding service in the armed forces; provided, that any additional premium which may be required for the coverage of such student shall be paid in full by the employee. The standards for such full-time instruction and the time required to complete such a program of education shall be determined by the appropriate public authority.

(c) "District", any water, sewer, light, fire, veterans' services or other improvement district or public unit created within one or more political subdivisions of the commonwealth for the purpose of providing public services or conveniences.

(d) "Employee", any person in the service of a governmental unit or whose services are divided between two or more governmental units or between a governmental unit and the commonwealth, and who receives compensation for such service or services, whether such person be employed, appointed or elected by popular vote, and any employee of a free public library maintained in a city or town to the support of which said city or town annually contributes not less than one half of the cost; provided, the duties of such person require no less than twenty hours, regularly, in the service of the governmental unit during the regular work week of permanent or temporary employment, and provided, further that no seasonal employee or emergency employees shall be included; except that persons elected by popular vote may be considered eligible employees during the entire term for which they are elected regardless of the number of hours devoted to the service of the governmental unit. A member of a call fire department or other volunteer emergency service agency serving a municipality shall be considered an employee, if approved by vote of the municipal legislative body, and the municipality shall charge such individual 100 per cent of the premium. If an employee's services are divided between governmental units, the employee shall, for the purposes of this chapter, be considered an employee of the governmental unit which pays more than fifty per cent of his salary. But, if no one of said governmental units pays more than fifty per cent of said employee's salary, the governmental unit paying the largest share of the salary shall consider the employee as its own for membership purposes, and said governmental unit shall contribute fifty per cent of the cost of the premium. If the payment of an employee's salary is equally divided between governmental units, the governmental unit having the larger or largest population shall contribute fifty per cent of the cost of the premium. If an employee's salary is divided in any manner between a governmental unit and the commonwealth, the governmental unit shall contribute fifty per cent of the cost of the premium. An employee eligible for coverage under the provisions of this chapter shall not be eligible for coverage as an employee under the provisions of chapter thirty-two A. Teachers and all other public school employees shall be deemed to be employees during the months of July and August for purposes of this chapter; provided, however, that employee contributions for such health insurance for those two months are deducted from the compensation paid for services rendered during the previous school year. A determination by the appropriate public authority that a person is eligible for participation in the plan of insurance shall be final. Nothing in this paragraph shall apply to Worcester county or its employees.

(e) "Employer", the governmental unit.

(f) "Governmental unit", any political subdivision of the commonwealth.

(g) "Political subdivision", any county, except Worcester county, city, town or district.

(h) "Commission", the group insurance commission established by section three of chapter thirty-two A.

(i) "Optional medicare extension", a program of hospital, surgical, medical, dental and other health insurance for such active employees and their dependents and such retired employees and their dependents, except elderly governmental retirees insured as provided under section eleven B, as are eligible or insured under the federal health insurance for the aged act, as may be amended from time to time.

(j) "Health care organization", an organization for the group practice of medicine, with or without

hospital or other medical institutional affiliations, which furnishes to the patient a specified or unlimited range of medical, surgical, dental, hospital and other types of health care services.

Added by St.1956, c. 730, § 1. Amended by St.1958, c. 136, § 2; St.1958, c. 536; St.1958, c. 558, § 3; St.1958, c. 580; St.1960, c. 214, § 1; St.1960, c. 337, § 1; St.1962, c. 193, § 3; St.1965, c. 841, § 1; St.1971, c. 946, § 4; St.1975, c. 806, § 2; St.1982, c. 615, §§ 4 to 6; St.1992, c. 250; St.2003, c. 46, § 12, eff. July 31, 2003; St.2006, c. 90, eff. May 19, 2006; St.2007, c. 67, §§ 3D, 3E, eff. July 25, 2007.

§ 2A. Traffic supervisors as employees

In cities and towns which accept the provisions of this section, traffic supervisors shall be considered employees under this chapter, notwithstanding the definition of "Employee" in section two.

Added by St.1977, c. 342.

§ 2B. Reserve, permanent-intermittent or call firefighters as employees

In governmental units which accept the provisions of this section, reserve, permanent-intermittent or call firefighters shall be considered employees under this chapter, notwithstanding the definition of "Employee" in section two, and upon retirement shall be considered retirees under this chapter.

Added by St.1987, c. 246.

§ 3. Purchase of group life, accidental death, etc., insurance policies; reinsurance agreements

Upon acceptance of this chapter as hereinafter provided, the appropriate public authority of the governmental unit shall negotiate with and purchase, on such terms as it deems to be in the best interest of the governmental unit and its employees, from one or more insurance companies, savings banks or non-profit hospital, medical, dental or other, service corporations, a policy or policies of group life and accidental death and dismemberment insurance covering employees, and group general or blanket insurance providing hospital, surgical, medical and dental benefits covering employees and their dependents as provided under section eleven and section eleven A if applicable and shall execute all agreements or contracts pertaining to said policies or any amendments thereto for and on behalf and in the name of such governmental unit. Said policy, or policies, including policies purchased under authority of sections three A and sixteen, shall contain a requirement that the insurance company, savings bank, nonprofit hospital, medical, dental or other service corporations, other intermediary or health care organizations, shall furnish the governmental unit, or its designee, all nonconfidential claims without diagnosis on a form satisfactory to the governmental unit including, but not limited to, computer tape, disc or unlined paper reports. Said insurer may, pursuant to a contract between said insurer and said governmental unit, charge the governmental unit a reasonable fee to cover the costs of providing the nonconfidential claims in the form requested by the governmental unit. Prior to the purchase of said insurance, and execution of all such agreements or contracts within the limits established by said sections, the appropriate public authority shall consult with an advisory committee for the purpose of securing the written recommendations of a majority of the membership of said committee. Said committee shall consist of eight members as follows: seven persons to be duly elected or appointed to membership on such committee by organizations of the employees affected, and one person who shall be a retiree of a governmental unit who shall be duly appointed to membership on said committee by the appropriate public authority. If the appropriate public authority finds that the committee's recommendations in whole or in part cannot be included within the aforementioned agreements or contracts, at the written request of any member of said committee within thirty days from the effective date of the agreements or contracts, the appropriate public authority shall submit to said member, in writing, the reasons for the rejection of any or all of the recommendations and a copy shall be filed with the commission. The appropriate public authority may execute said agreements or contracts for a period not exceeding five years; provided, however, that the portion of the cost of the premium per month to be borne by the governmental unit shall not exceed the estimated monthly cost for which funds have been appropriated for the then current fiscal year. If a town or district having accepted the provisions of section ten accepts any other section of this chapter but fails to appropriate the funds necessary to implement said provisions, the selectmen, in the case of a town, or the prudential committee or district commissioner, in the case of a district, shall certify the cost to the town or district, as the case may be, in carrying out the provisions of this chapter to the board of assessors who shall include the amount so certified in the determination of the tax rate of that year. If a city

accepts the provisions of this chapter as provided under section ten and as further provided under sections seven A and nine E, the annual budget shall include sums necessary to implement said provisions. Arrangements may be made with the carrier or carriers issuing such policy or policies purchased under this chapter to reinsure, by reinsurance agreement, under conditions approved by the appropriate public authority, portions of the total amount of such insurance with such other carriers as may elect to participate in such insurance.

For the purposes of this chapter, any non-profit hospital service corporation or non-profit medical corporation organized under chapter one hundred and seventy-six A or one hundred and seventy-six B and any dental service corporation organized under chapter one hundred and seventy-six E shall be and is hereby authorized to enter into a reinsurance agreement as herein provided in the same manner as any other insurance company.

Added by St.1956, c. 730, § 1. Amended by St.1957, c. 242; St.1959, c. 170; St.1960, c. 337, § 2; St.1961, c. 236; St.1961, c. 334, § 1; St.1968, c. 100, § 4; St.1971, c. 196; St.1973, c. 843, § 1; St.1974, c. 721; St.1975, c. 183; St.1975, c. 806, §§ 3, 4; St.1979, c. 268, § 7; St.1987, c. 565; St.1990, c. 499, § 9; St.1993, c. 110, § 100; St.1996, c. 366, § 7.

§ 3A. Administrative services contract for payment of claims by political subdivision; claims trust fund; annual audit

A city, town, county, except Worcester county, or other subdivision of the commonwealth, when providing hospital, surgical, medical, dental and other health care coverage as authorized by this chapter, and subject to the adequacy of a claims trust fund as hereinafter described, may, in lieu of or in addition to entering into the insurance policies, agreements, or contracts described in this chapter, enter into an administrative services or other contract with one or more insurance companies, nonprofit hospital, medical or dental service corporations organized under chapter one hundred and seventy-six A, chapter one hundred and seventy-six B, or chapter one hundred and seventy-six E, or with one or more health care organizations, or with one or more third-party administrators or other entities to organize, arrange, or provide for the delivery or payment of health care coverage or services, whereby the funds for the payment of claims of eligible persons, including appropriate service charges of the insurance carrier, third party administrator or other intermediary, shall be furnished by the respective subdivision from the claims trust fund for the payment by such intermediary to the health care vendors or persons entitled to such payment in accordance with the terms and provisions of said contract. Subject to the adequacy of a claims trust fund, as hereinafter described, a city, town, county, except Worcester county, or other subdivision of the commonwealth may itself provide all or a portion of the administrative services authorized by this section without contracting with an insurance company, third party administrator or other intermediary for such services. If deemed by the city, town, county, except Worcester county, or other subdivision to be in the best interests of the subdivision and its active and retired employees and their eligible dependents, the respective subdivision may enter into such service type contracts for a period not to exceed five years.

Funds made available by appropriations by the city, town, county except Worcester county, or other subdivision of the commonwealth for purposes of this chapter on the basis of the contributory share of the subdivision as set forth and applicable therein shall, upon authorization by the subdivision, be transferred from said appropriation account by the treasurer and shall be deposited from time to time by the treasurer in a separate fund to be known as the claims trust fund. Notwithstanding the provisions of section fifty-five of chapter forty-four, the treasurer shall be the custodian of said fund and may deposit the proceeds in national banks or invest the proceeds by deposit in savings banks, cooperative banks or trust companies organized under the laws of the commonwealth, or invest the same in such securities as are legal for the investment of funds of savings banks under the laws of the commonwealth or in federal savings and loan associations situated in the commonwealth. Any interest or return of premium or claims advance, excluding dividends applicable to section eight or eight A, shall be added to and become part of the fund. The treasurer shall invest and reinvest as aforesaid such funds to the extent not required for current disbursement as determined by the subdivision. Any interest liability incurred as the result of processing a tax anticipation loan authorized by section four of chapter forty-four, and directly related to the establishment or the continuance of the aforesaid claims trust fund, shall be chargeable to said fund. The treasurer shall take measures that will assure a sufficient balance at all times in said fund to make prompt payment for incurred and unpaid claims

and other related liabilities. The subdivision insofar as practicable shall prepare annually or sooner a schedule for the treasurer which shall be an estimate of the amounts of anticipated monthly disbursements to be made from said fund and shall as frequently as necessary authorize disbursements therefrom in accordance with the terms and conditions of the contracts authorized by this section.

Where an annual or earlier accounting of administrative service charges, claims paid, and claims incurred and unpaid, under a contract authorized by this section to the subdivision, discloses that payment from the fund has resulted in the contributions of the subdivision and its employees and retirees toward a previously established total monthly premium or rate has been shared on a ratio inconsistent with the share of the contributions as provided from time to time by applicable sections of this chapter, the subdivision shall adjust future contributions toward the total monthly premium or rate to compensate for the inconsistency. Payment to the subdivision by the employees, retirees and surviving spouses of their contribution toward the total monthly premium or rate shall be to the extent and manner as required in the applicable sections of this chapter.

Any city, town, county, or other political subdivision of the commonwealth maintaining a claim trust fund under this section shall cause an audit of that fund to be made annually. The audit shall determine whether the accounting for the fund is in accordance with generally accepted accounting principles, including accrual for claims that have been incurred but not paid as of the conclusion of the fiscal year. The audit may be performed as part of the annual audit of the city, town, county, or other political subdivision. The amount of any deficit in a claims trust fund, if not otherwise provided for, shall be raised in the next fiscal year's tax rate for a city or town, or be provided in the next fiscal year's budget for any other political subdivision and credited to the claims trust fund. Nothing in this paragraph shall eliminate the requirement of the preceding paragraph with respect to adjusting the future ratio of monthly premium contributions of the subdivision and its employees and retirees to achieve a previously established ratio or ratios of monthly premium contributions.

Added by St.1977, c. 900. Amended by St.1979, c. 268, § 8; St.1982, c. 615, § 7; St.1991, c. 138, § 120; St.1996, c. 366, § 8; St.2005, c. 61, § 1, eff. Aug. 3, 2005.

§ 7. Premiums; withholding, contribution; direct payment

(a) With respect to any period of insurance which is in effect for an active or retired employee and dependent there shall be withheld from each payment of salary, wages, other compensation, pension or retirement allowance, subject to the provisions of section nine A, fifty per cent of the premium for the insurance of the employee and his dependents and the governmental unit shall contribute the remaining fifty per cent of such premium. The governmental unit shall also contribute fifty per cent of any additional premium which may be required for coverage of an employee's dependent child who is nineteen years of age or over and mentally or physically incapable of earning his own living.

(b) If an employee is entitled to receive, during a calendar month, salary, wages or other compensation, and the premium has not been withheld from said salary, wages or other compensation, he may continue his insurance in effect by paying directly to the governmental unit the premium which would otherwise have been deducted from his salary or wages and said governmental unit shall contribute the remaining fifty per cent of the cost of the premium. If an employee is not entitled to receive salary, wages or other compensation for a calendar month, for purposes of this chapter, he shall be deemed to have been granted a leave of absence without pay, and shall make payment for the entire cost of his insurance to the governmental unit as aforesaid, and there shall be no contribution by the governmental unit for such employee's insurance. If an employee is not entitled to receive salary, wages or other compensation for any calendar month, due to illness of such employee and not because of illness of his immediate family, for purposes of this chapter he shall be deemed to have been granted sick leave without pay, and subject to the rules and regulations of the appropriate public authority, said employee shall make payment for fifty per cent of the cost of his insurance to the treasurer of the governmental unit, and such governmental unit shall contribute the remaining fifty per cent of said premium.

(c) All amounts withheld from an employee's salary, wages or other compensation as provided in paragraph (a) of this section and all amounts paid by an employee as provided in paragraph (b) of this section and all amounts withheld from retired employees as retirement allowances under the provisions of section nineteen A of chapter thirty-two

together with the contribution of the governmental unit as provided in paragraph (a) shall be paid by the treasurer of the governmental unit to the carrier or carriers entitled to the premium.

Added by St.1956, c. 730, § 1. Amended by St.1960, c. 214, § 2; St.1965, c. 841, § 4.

§ 7A. Contribution and withholding for premiums; subsidiary or additional rate; payments in lieu of withholding; acceptance of section

A governmental unit which has accepted the provisions of section ten and which accepts the provisions of this section may, as a part of the total monthly cost of contracts of insurance authorized by sections three and eleven C, with contributions as required by section seven, make payment of a subsidiary or additional rate which may be lower or higher than a premium determined by the governmental unit to be paid by the insured, the combination of which shall result in the governmental unit making payment of more, but not less, than fifty per cent of the total monthly cost for such insurance. No governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit.

(a) With respect to any period of insurance which is in effect for an active or retired employee and dependent, there shall be withheld from each payment of salary, wages, other compensation, pension or retirement allowance, subject to the provisions of section nine E, fifty per cent of a premium for the insurance of the employee and his dependents and the governmental unit shall contribute the remaining fifty per cent of such premium together with any subsidiary or additional rate. The governmental unit shall also contribute fifty per cent of a premium together with any subsidiary or additional rate which may be required of an employee's dependent child who is nineteen years of age or over and mentally or physically incapable of earning his own living.

(b) If an active or retired employee is entitled to receive, during a calendar month, salary, wages, other compensation, pension or retirement allowance, and the premium has not been withheld from said salary, wages, other compensation, pension or retirement allowance, he may continue his insurance in effect by paying directly to the governmental unit the premium which would otherwise have been deducted from his salary or pension and said governmental unit shall contribute the remaining fifty per cent of the premium together with any subsidiary or additional rate. If an employee is not entitled to receive salary, wages or other compensation for a calendar month, for purposes of this chapter, he shall be deemed to have been granted a leave of absence without pay, and he shall make payment for the entire cost of his insurance to the governmental unit as aforesaid, and there shall be no contribution by the governmental unit for such employee's insurance. If an employee is not entitled to receive salary, wages or other compensation for any calendar month, due to illness of such employee and not because of illness of his immediate family, for purposes of this section he shall be deemed to have been granted sick leave without pay, and subject to the rules and regulations of the appropriate public authority, said employee shall make payment of fifty per cent of the premium for his insurance to the treasurer of the governmental unit, and such governmental unit shall contribute the remaining fifty per cent of such premium together with any subsidiary or additional rate.

(c) All amounts withheld from an employee's salary, wages or other compensation as provided in paragraph (a) of this section and all amounts paid by an employee as provided in paragraph (b) of this section and all amounts withheld from retired employees as retirement allowances under the provisions of section nineteen A of chapter thirty-two together with the contribution of the governmental unit as provided in paragraph (a) shall be paid by the treasurer of the governmental unit to the carrier or carriers entitled to the total premium and subsidiary or additional rate, if any.

(d) This section shall take effect in a county, except Worcester county, city, town or district upon its acceptance in the following manner:—In a county by vote of the county commissioners; in a city having a Plan D or Plan E charter by majority vote of its city council; in any other city by vote of its city council, approved by the mayor; in a district, except as hereinafter provided, by vote of the registered voters of the district at a district meeting; in a regional school district by vote of the regional district school committee; in a veterans' services district by vote of the district board; in a welfare district by vote of the district welfare committee; in a health district established under section twenty-seven A of chapter one hundred and eleven by vote of the joint committee; and in a town either by vote of the town or by a majority of affirmative votes cast in answer to the following question which shall be printed upon the official ballot to be used at an election in said town:—

"Shall the town, in addition to the payment of fifty per cent of a premium for contributory group life and health insurance for employees in the service of the town and their dependents, pay a subsidiary or additional rate?" Section seven shall not apply in any governmental unit which accepts the provisions of this section.

Added by St.1968, c. 100, § 1. Amended by St.1972, c. 641, § 1; St.1973, c. 789, § 1; St.1982, c. 615, § 8.

§ 8. Dividends, refunds and rate credits to inure to benefit of governmental unit

Any dividend or other refund or rate credit shall inure to the benefit of the governmental unit or to the governmental units participating under section eleven in proportion to the gross premiums paid by each governmental unit.

Added by St.1956, c. 730, § 1.

§ 8A. Dividends and refunds; deposit in employees' group insurance trust fund; administrative costs; effective date

In any governmental unit which accepts the provisions of this section, all dividends, their equivalent and other such refunds accepted by the governmental unit from the carrier or carriers as a result of any policy or policies entered into under the authority of this chapter shall be deposited by the treasurer thereof in a separate fund to be known as the employees' group insurance trust fund.

Prior to the distribution of all such dividends or refunds, the appropriate public authority shall determine the total administrative cost of all policies of insurance entered into under authority of this chapter for the calendar year preceding the date of receipt of the dividend, and shall notify the treasurer to transfer the amount of said total administrative cost from the said trust fund to the appropriate general revenue accounts of the governmental unit.

If the said total administrative cost exceeds the dividend receipts, the entire dividend shall be so transferred; if the dividend receipts exceed the said total administrative cost, the appropriate public authority shall notify the treasurer to transfer to the appropriate revenue accounts that portion of the remaining balance which represents the governmental units' proportionate share of the premium cost of the policy year to which the dividend or refund is attributable. The balance of said dividend remaining in the trust fund shall represent the employees' and retirees' proportionate share of the premium cost. The appropriate public authority at a date deemed practicable shall then authorize the treasurer to expend the remaining balance of the trust fund on behalf of the insured employees and retired employees to reduce the insured employees' and retired employees' share of future premium costs or by a proportionate refund to insured members. The reduction of such costs shall be determined by using the ratio of the dividends received to the insured employees' and retired employees' share of the total premiums which yielded the dividend.

In the event two or more governmental units are participating in accordance with section eleven, all dividends or their equivalent or other such refunds shall first be allocated to the respective governmental units in proportion to the gross premiums paid by each governmental unit to the respective carrier or carriers.

This section shall take effect in a county, except Worcester county, city, town or district upon its acceptance in the following manner:—In a county by vote of the county commissioners; in a city having a Plan D or Plan E charter by majority vote of its city council; in any other city by vote of its city council, approved by the mayor; in a district by vote of the district at a district meeting; and in a town if a majority of the votes cast in answer to the following question, which shall be printed on the official ballot to be used at an election in said town, is in the affirmative:—"Shall the town distribute to its insured employees, after deducting the town's total administrative cost, the balance of any group insurance dividend which shall be based upon the employees' proportionate share of the total premiums paid for all insurance coverages?"

Section eight shall not apply in any governmental unit which accepts the provisions of this section.

Added by St.1965, c. 374, § 1. Amended by St.1971, c. 432, § 3; St.1980, c. 150; St.1982, c. 615, § 9.

§ 9. Policy provisions

The policy or policies of insurance shall provide that upon retirement of an employee, the policy or policies providing at least two thousand dollars of group life insurance and at least two thousand dollars of group accidental death and dismemberment insurance as set forth in section five, except the optional coverage referred to therein, shall be reduced to one thousand dollars of group life insurance, unless the governmental unit has accepted

section nine F, and the retired employee shall make payment of the full premium cost, subject to the provisions of section nine A or nine E, whichever may be applicable, of the average group premium as determined by the appropriate public authority for such insurance; and the group general or blanket insurance providing hospital, surgical, medical, dental and other health insurance, as provided under sections four, eleven C, and sixteen as may be applicable, shall be continued and the retired employee shall pay the full premium cost, subject to the provisions of section nine A or section nine E whichever may be applicable of the average group premium as determined by the appropriate public authority for such hospital, surgical, medical, dental and other health insurance.

The policy or policies may provide for group life insurance not to exceed one thousand dollars on the lives of retired employees who, up to the effective date of such policy or policies, were insured under a group life policy purchased pursuant to the provisions of clause (44) of section five of chapter forty.

Prior to retirement, an insured employee who terminates his services with the governmental unit and who has a right to retire but whose retirement is deferred under any applicable law shall for the purpose of this chapter only be deemed to have been granted a leave of absence without pay and may continue all insurance coverages to which he would have been entitled if he had not terminated his services; provided he files an application therefor with the treasurer of the governmental unit and makes payment for the full premium cost of his insurance with no contribution by the governmental unit notwithstanding the provisions of sections nine A or nine E.

The policy or policies shall also provide that upon termination of employment an employee shall be entitled to convert his insurance to an individual type of policy, subject to the provisions of section one hundred and thirty-four of chapter one hundred and seventy-five with respect to life insurance, and subject to the requirements of the appropriate public authority with respect to health insurance coverages provided in this chapter which shall not be less than the minimum hospital, medical, surgical, dental and other health benefits provided in an individual policy regularly issued by the insurance carrier at the time of conversion, except that with respect to the services of a health care organization, the contract made under section sixteen may provide for extension or continuation of coverage in lieu of the right to convert. No employee will be permitted to convert his insurance or extend or continue coverage for services of a health care organization on separation from service more than one time, if such converted or extended insurance would result in a greater amount of insurance than is provided in sections three, five, eleven C or twelve, as the case may be.

Added by St.1956, c. 730, § 1. Amended by St.1961, c. 100; St.1961, c. 334, § 4; St.1965, c. 841, § 5; St.1968, c. 100, § 3; St.1971, c. 946, § 6; St.1972, c. 763, § 1; St.1975, c. 806, §§ 8, 9; St.1986, c. 705, § 3.

§ 9A. Political subdivision; contribution for insurance premiums of retired employees

A county, except Worcester county, by vote of the county commissioners, a city having a Plan D or a Plan E charter by majority vote of its city council, any other city by vote of its city council, approved by the mayor, a regional school district by vote of the regional district school committee and a district by vote of the district at a district meeting, may provide that it will pay one-half of the amount of the premium to be paid by a retired employee under the first sentence of section 9. A town shall provide for the payment by vote of the town at a town meeting or if a majority of the votes cast in answer to the following question which shall be printed on the official ballot to be used at an election in said town is in the affirmative:— "Shall the town pay one-half the premium costs payable by a retired employee for group life insurance and for group general or blanket hospital, surgical, medical, dental and other health insurance?"

Added by St.1959, c. 595. Amended by St.1973, c. 789, § 2; St.1975, c. 806, § 10; St.1982, c. 615, § 10; St.2003, c. 46, § 13, eff. July 31, 2003.

§ 9E. Subsidiary or additional rate; payment by political subdivisions; premium payment by retired employee; acceptance of section

A county, except Worcester county, by vote of the county commissioners; a city having a Plan D or Plan E charter by majority vote of its city council; in any other city by vote of its city council, approved by the mayor; a district, except as hereinafter provided, by vote of the registered voters of the district at a district meeting; a regional school district by vote of the regional district school committee; a veterans' services district by vote of the district board; a welfare district by vote of the district welfare committee; a health district established under section twenty-seven A of chapter one

hundred and eleven by vote of the joint committee may provide that it will pay in addition to fifty per cent of a stated monthly premium as described in section seven A for contracts of insurance authorized by sections three and eleven C, a subsidiary or additional rate which may be lower or higher than the aforesaid premium and the remaining fifty per cent of said premium is to be paid by a retired employee under the provisions of the first sentence of section nine. A town shall provide for such payment by vote of the town or if a majority of the votes cast in answer to the following question which shall be printed on the official ballot to be used at an election in said town is in the affirmative:—"Shall the town, in addition to the payment of fifty per cent of a premium for contributory group life, hospital, surgical, medical, dental and other health insurance for employees retired from the service of the town, and their dependents, pay a subsidiary or additional rate?" Section nine A shall not apply in any governmental unit which accepts the provisions of this section. No governmental unit, however, shall provide different subsidiary or additional rates to any group or class within that unit.

Added by St.1968, c. 100, § 2. Amended by St.1972, c. 641, § 2; St.1973, c. 789, § 4; St.1975, c. 806, § 16; St.1982, c. 615, § 14.

§ 10. Acceptance of chapter by county, city, town, municipality or district

This chapter, except sections seven A, eight A, nine A, nine C, nine D, nine E, nine F, eleven A, eleven B, eleven D, eleven E, eleven F and sixteen, may be accepted in a county, except Worcester county, by vote of the county commissioners; in a city having a Plan D or Plan E charter by majority vote of its city council, in any other city by vote of its city council, approved by the mayor, in a municipality having a town council form of government, by vote of the town council, subject to the provisions of the charter of such municipality; in a district, except as hereinafter provided, by vote of the registered voters of the district at a district meeting; in a regional school district by vote of the regional district school committee; in a veterans' services district by vote of the district board; in a welfare district by vote of the district welfare committee; in a health district established under section twenty-seven A of chapter one hundred and eleven by vote of the joint committee; and in a town by submission for acceptance to the registered voters in the form of the following question which shall be printed upon the official ballot to be used at an election:—"Shall certain provisions of chapter thirty-two B of the General Laws, authorizing any county, except Worcester county, city, town or district to provide a plan of contributory group life insurance, group accidental death and dismemberment insurance, and group general or blanket hospital, surgical, medical, dental and other health insurance for certain persons in the service of such county, city, town or district and their dependents, be accepted by this town?" If a majority of the voters voting on the question shall vote in the affirmative, this chapter, except sections seven A, eight A, nine A, nine C, nine D, nine E, nine F, eleven A, eleven B, eleven D, eleven E, eleven F and sixteen, shall take effect in such town.

Notwithstanding the provisions of any general law to the contrary, neither the acceptance of this chapter nor the acceptance of any individual section thereof by a governmental unit shall be revoked or rescinded.

This chapter shall not apply to Worcester county nor to its employees, and they shall be eligible for coverage under the provisions of chapter thirty-two A. This action shall be a transferral and not a revocation or rescission.

Added by St.1956, c. 730, § 1. Amended by St.1962, c. 150; St.1962, c. 647, § 4; St.1965, c. 374, § 2; St.1967, c. 352; St.1967, c. 373, § 1; St.1968, c. 100, § 5; St.1970, c. 626, § 2; St.1971, c. 203, § 1; St.1971, c. 946, § 7; St.1972, c. 763, § 3; St.1975, c. 806, § 18; St.1977, c. 870, § 2; St.1982, c. 615, § 17; St.1986, c. 557, § 51.

§ 10A. Purchase of insurance by public authority following acceptance of chapter

The appropriate public authority shall provide for the purchase of insurance, or include the cost thereof, for dental expenses under those sections of this chapter which provide for the purchase of hospital, surgical, medical, dental and other health insurance benefits but only upon the acceptance of this section in the following manner:—in a city having a Plan D or Plan E charter by majority vote of its city council; in any other city by vote of its city council, approved by the mayor; in a district, except as hereinafter provided, by vote of the registered voters of the district at a district meeting; in a regional school district by vote of the regional district school committee; in a veterans' services district by vote of the district board; in a health district established under section twenty-seven A of chapter one hundred and eleven by vote of the joint committee; and in a town by vote of the board of selectmen or, by vote of the town at a town meeting

or, by submission for acceptance to the registered voters in the form of the following question which shall be printed upon the official ballot to be used at an election:—"Shall certain provisions of chapter thirty-two B of the General Laws, authorizing any county, except Worcester county, city or town or district to provide dental benefits as part of group general or blanket insurance providing hospital, surgical, medical, and other health insurance benefits for certain persons in the service of such county, town or district and their dependents, be accepted by this town?" If a majority of the voters voting on the question shall vote in the affirmative, the chapter shall take effect in such town.

Any town which is a member of the Cape Cod municipal health group which does not provide dental benefits under this chapter may provide that any general, group or blanket insurance policy it purchases makes dental benefits available to employees at said employees' expense.

Notwithstanding the provisions of any general law to the contrary, acceptance of this section shall not be revoked or rescinded. This section shall not apply to Worcester county nor its employees, and they shall be eligible for coverage under the provisions of chapter thirty-two A. This action shall be a transferral and not a revocation or rescission.
Added by St.1975, c. 806, § 19. Amended by St.1982, c. 615, §§ 18, 19; St.1993, c. 363.

§ 15. Insurance coverage for employees of governmental units; appropriation or expenditure of public funds for payment of premiums

(a) Upon acceptance of this subsection by its appropriate public authority and subject to any necessary appropriation, a governmental unit, acting by and through its appropriate public authority, may offer its employees a policy or policies of group long-term disability insurance, group dental insurance or group vision care insurance. A governmental unit may contract for such insurance coverage individually or through its membership in a trust or joint purchase group as provided in section twelve of this chapter. A governmental unit may elect to pay any part or none of the premium cost for such insurance coverage for its employees, and may bargain for such insurance coverage collectively.

(b) No governmental unit may appropriate or expend public funds for the payment of premiums for group life insurance, group accidental death and dismemberment insurance and group general or blanket hospital, surgical, medical, dental and other health insurance for its active or retired employees, or their dependents, unless such insurance is procured pursuant to the provisions of this chapter, or unless such payments are authorized by section five of chapter forty, or unless such payments are made, pursuant to an agreement of an employer and an employee organization, to a health and welfare trust fund agreement for the purposes of (i) providing health benefits not otherwise provided to such employees by said governmental unit under the provisions of this chapter or (ii) paying contributions by said governmental unit toward premium costs or rates in excess of the level of such premium cost or rate contributions otherwise provided for under the provisions of this chapter or (iii) providing health benefits required under this chapter. This subsection shall not apply to the county of Worcester.
Added by St.1967, c. 373, § 2. Amended by St.1982, c. 615, § 26; St.1988, c. 82; St.1993, c. 110, § 102; St.1996, c. 288, § 1.

§ 16. Optional insurance for services of health care organizations

Upon acceptance of this section as hereinafter provided, the appropriate public authority of the governmental unit shall enter into a contract, hereinafter described, to make available the services of a health care organization to certain eligible and retired employees and dependents, including the surviving spouse and dependents of such active and retired employees, on a voluntary and optional basis, as it deems to be in the best interest of the governmental unit and such eligible persons as aforesaid, provided:—

(1) that the total monthly premium cost to be paid by the governmental unit is to be paid under the terms of a contract to a carrier and not paid directly to a health care organization. For purposes of this chapter such a contract shall be deemed to be a contract of insurance;

(2) that the health care organization maintains fair and non-discriminatory formulas for the payment of all vendor's services and that such formulas result in the same relative charges to all fiscal intermediaries or carriers with whom the health care organization has an agreement; provided, however, that any difference in relative charges which may result from the application of a rate of payment approved under section five of chapter

one hundred and seventy-six A shall be deemed to comply herewith.

The appropriate public authority shall negotiate such a contract of insurance for and on behalf and in the name of the governmental unit for such a period of time not exceeding five years as it may in its discretion, deem to be the most advantageous to the governmental unit and the persons insured hereunder.

All persons eligible for the insurance provided under section five shall have the option to be insured for the services of a health care organization under this section but shall not be insured for both. Eligible persons, having elected coverage under this section by making application as provided in section six, shall pay a minimum of ten percent of the total monthly premium cost or rate for coverage under this section, and the governmental unit shall pay the remainder of the total monthly premium cost or rate; provided, however, that nothing in this chapter shall preclude the parties to a collective bargaining agreement under chapter one hundred and fifty E from agreeing that such eligible persons shall pay a percent share of such total monthly premium cost or rate which is higher than said ten percent; provided, further, that such eligible persons shall in no event be required to pay more than fifty percent of such total monthly premium cost or rate. Such payment by the insured shall be made to the governmental unit as provided in sections seven, seven A, nine A, nine B, nine C, nine D and nine E, as may be applicable.

The governmental unit shall require under the terms and provisions of such insurance contracts an accounting at least annually of the payments made to providers of services on behalf of each person so insured; and, the extent and range of health care services shall be a matter of continuing analysis and study by the governmental unit for the purpose of maintaining a reasonable relationship between the total monthly premium cost or rate and the schedule of health care services provided.

Any dividend or its equivalent derived from insurance contracts issued pursuant to this section shall be applied as provided in sections eight or eight A whichever may be applicable.

The appropriate public authority may adopt such rules and regulations as may be necessary for the administration of this section.

This section shall take effect in a county, except Worcester county, city, town or district upon its acceptance in the following manner:—in a county, except Worcester county, by vote of the county commissioners; in a city having a Plan D or Plan E charter by majority vote of its city council, in any other city by vote of its city council approved by the mayor; in a town by vote of the board of selectmen; in a regional school district by vote of the regional district school committee and in all other districts by vote of the registered voters of the district at a district meeting.

Added by St.1971, c. 946, § 5. Amended by St.1973, c. 789, § 10; St.1973, c. 843, §§ 8 to 10; St.1976, c. 454, § 2; St.1979, c. 268, § 10; St.1982, c. 615, § 27; St.1989, c. 653, § 37; St.1996, c. 366, § 10.

§ 17. Election to continue insurance coverages; notice

(a) In any city or town which accepts the provisions of this section, an employee, in addition to the right of a deferred retiree status, or, conversion of insurance coverages to a non-group policy as provided in this chapter, and upon his involuntary termination of employment due to lack of funds, lack of work, or abolition of the position, may elect to continue all or a part of his insurance coverages including membership in a health maintenance organization, until such employee and dependents have become eligible and insured under another group plan of health insurance but in no event shall such extension of coverages exceed a period of thirty-nine weeks computed from the date of termination of employment or the date to which insurance premiums have been regularly paid, whichever is the later.

(b) Upon determination by the employer of the termination of employment as described in this section, the employer shall notify in writing the employee of the right to elect to continue coverages under this section and a copy of such notification shall be sent to the treasurer or department charged with the responsibility to administer the group insurance plans for payroll deduction, and direct payment purposes, at least fifteen working days if possible, prior to the date of termination of employment.

(c) The involuntarily terminated insured employee and on behalf of his dependents shall, upon election to continue insurance coverages under this section, give at least a thirty day written notice thereof to the employer. Such employee shall be responsible for making payment to the treasurer of the governmental unit of the total monthly premiums or rates, with no contribution by the govern-

mental unit. The treasurer of the governmental unit, or his authorized designee, shall send a written notice by regular mail of the monthly premiums when due to the last known address of the terminated employee, who, upon making timely monthly payments to the treasurer shall be required to certify under the penalty of perjury that the employee is not eligible or insured under another group policy or plan. Failure on the part of the treasurer to transmit the terminated employee's premiums to the governmental unit's insurance carriers in a timely manner shall nevertheless render the insurance carrier and the governmental unit liable under its policy or contracts for payment of claims to the same extent as if the treasurer had transmitted the employee's premiums in a timely manner to the insurance carriers or plans. Section twenty-seven C of chapter twenty-nine shall not apply to this paragraph.

(d) Upon expiration of the period of the extension as provided in this section the governmental unit shall provide to the terminated employee and dependents conversion rights to non-group coverages to the extent that such rights had not been exercised heretofore during the latest period of employment.

(e) If it is determined by the appropriate public authority to be in the best interests of the governmental unit and its formerly insured employees whose employment has been terminated as described in this section that the extension of the insurance coverages would be less costly to the local governmental unit by transferring the eligibility for similar coverages, as provided by the commonwealth for its employees, to the commission for the centralization and maintenance during this temporary extension period and without loss of other rights to the terminated employee, application in writing may be made to the commission for approval. The appropriate public authority shall be notified within five working days of the commission's decision.

Added by St.1981, c. 392, § 22.

§ 18. Medicare extension plans; mandatory transfer of retirees

In a governmental unit which has accepted the provisions of section ten and which accepts the provisions of this section, all retirees, their spouses and dependents insured or eligible to be insured under this chapter, if enrolled in medicare part A at no cost to the retiree, spouse or dependents or eligible for coverage thereunder at no cost to the retiree, spouse or dependents, shall be required to transfer to a medicare extension plan offered by the governmental unit under section eleven C or section sixteen; provided, that benefits under said plan and medicare part A and part B together shall be of comparable actuarial value to those under the retiree's existing coverage; provided, further, that retirees or spouse, who has a dependent who is not enrolled or eligible to be enrolled in Medicare part A at no cost shall not be required to transfer to a Medicare extension plan if a transfer requires the retiree or spouse to continue the existing family coverage for the dependent in a plan other than a Medicare extension plan offered by the governmental unit. Each retiree shall provide the governmental unit, in such form as the governmental unit shall prescribe, such information as is necessary to transfer to a medicare extension plan. If a retiree does not submit the information required, he shall no longer be eligible for his existing health coverage. The governmental unit may from time to time request from any retiree, a retiree's spouse and dependents, proof certified by the federal government of their eligibility or ineligibility for medicare part A and part B coverage. The governmental unit shall pay any medicare part B premium penalty assessed by the federal government on said retirees, spouses and dependents as a result of enrollment in medicare part B at the time of transfer into the medicare health benefits supplement plan.

This section shall take effect in a county, except Worcester county, city, town or district upon its acceptance in the following manner:— In a county by vote of the county commissioners; in a city having a Plan D or Plan E charter by a majority vote of its city council; in any other city by vote of its city council, approved by the mayor; in a district, except as hereinafter provided, by vote of the registered voters of the district at a district meeting; in a regional school district by vote of the regional district school committee; and in a town either by vote of the town at a town meeting or, by a majority of affirmative votes cast in answer to the following question which shall be printed upon the official ballot to be used at an election of said town:— "Shall the town require that all retirees, their spouses and dependents who are enrolled in Medicare Part A at no cost to a retiree, their spouse or dependents, or eligible for coverage thereunder at no cost to a retiree, their spouse or dependents, be required to enroll in a medicare

health benefits supplement plan offered by the town?".

Added by St.1991, c.138, § 122. Amended by St.2008, c. 374, § 2, eff. Nov. 7, 2008.

§ 18A. Medicare extension plans; mandatory transfer of retirees

In a governmental unit that has accepted section 10 and that accepts this section, all retirees, their spouses and dependents insured or eligible to be insured under this chapter, if enrolled in Medicare Part A at no cost to the retiree, spouse or dependents or eligible for coverage thereunder at no cost to the retiree, spouse or dependents, shall be required to transfer to a Medicare extension plan offered by the governmental unit under section 11C or section 16, provided, that the benefits under the plan and Medicare Part A and Part B together shall be of comparable actuarial value to those under the retiree's existing coverage; provided, however, that a retiree or spouse who has a dependent who is not enrolled or eligible to be enrolled in Medicare Part A at no cost shall not be required to transfer to a Medicare extension plan if a transfer requires the retiree or spouse to continue the existing family coverage for the dependent in a plan other than a Medicare extension plan offered by the governmental unit. Each retiree shall provide the governmental unit, in such form as the governmental unit shall prescribe, such information as is necessary to transfer to a Medicare extension plan. If a retiree does not submit the information required, he shall no longer be eligible for his existing health coverage. The governmental unit may from time to time request from a retiree, a retiree's spouse or a retiree's dependent, proof, certified by the federal government, of eligibility or ineligibility for Medicare Part A and Part B coverage. The governmental unit shall pay any Medicare Part B premium penalty assessed by the federal government on the retiree, spouse or dependent as a result of enrollment in Medicare Part B at the time of transfer. For the purpose of this paragraph, "retiree" shall mean a person who retires after the acceptance of this section by a governmental unit.

A retiree who retires prior to the acceptance of this section by a governmental unit, his spouse and dependent shall continue to be eligible for benefits provided under this chapter, but may opt to transfer to a Medicare extension plan offered by the governmental unit under section 11C or section 16, thereby becoming ineligible to participate in any other group health insurance benefits available to active employees under this chapter.

This section shall take effect in a county, except Worcester county, city, town or district upon its acceptance in the following manner: In a county, by vote of the county commissioners; in a city having a Plan D or Plan E charter, by a majority vote of its city council; in any other city, by vote of its city council and approval by the mayor; in a district, except as hereinafter provided, by vote of the registered voters of the district at a district meeting; in a regional school district, by vote of the regional district school committee; and in a town, either by vote of the town at a town meeting or, by a majority of affirmative votes cast in answer to the following question which shall be printed upon the official ballot to be used at an election of said town - "Shall the town require that all retirees, who retire after the acceptance of this section, their spouses and dependents who are enrolled in Medicare Part A at no cost to a retiree, their spouse or dependents, or eligible for coverage thereunder at no cost to a retiree, his spouse or dependents, be required to enroll in a Medicare health benefits supplement plan offered by the town?".

Added by St.2008, c. 374, § 1, eff. Nov. 7, 2008.

§ 19. Health carriers; contracts; public employee committees; agreements with public authorities; transfer of subscribers to commission

(a) Notwithstanding any other provision of this chapter, the appropriate public authority of a political subdivision which has undertaken to provide health insurance coverage to its subscribers by acceptance of any other section of this chapter may instead elect to provide health insurance coverage to all its subscribers pursuant to this section by entering into contracts with health insurance carriers or by transferring its subscribers to the commission under subsection (e). For the purposes of this section, the term "subscribers" shall mean employees, retirees, surviving spouses and dependents of the political subdivision and may include employees, retirees, surviving spouses and dependents of a district who previously received health insurance benefits through the political subdivision accepting this section. This section shall take effect in a political subdivision upon its acceptance in the following manner: in a county, except Worcester county, by a vote of the county commissioners; in a city having Plan D or a Plan E charter, by majority vote of the city council and

approval by the manager; in any other city, by majority vote of the city council and approval by the mayor; in a town, by vote of the board of selectmen; in a regional school district, by vote of the regional district school committee; and in all other districts, by vote of the registered voters of the district at a district meeting.

Acceptance of this section shall not take effect until a written agreement has been reached between the appropriate public authority and the public employee committee, but the written agreement may condition acceptance of this section upon the transferring of subscribers into the commission under subsection (e).

A written agreement to transfer subscribers to the commission under this section shall be the sole means by which the subscribers of a political subdivision may be transferred to commission coverage.

Notwithstanding subsection (c) of section 4B of chapter 4, the acceptance of this section may be revoked in the same manner it was accepted in accordance with all other subsections of section 4B of said chapter 4, subject to the requirements of any written agreements as provided in this section and chapter 150E. The revocation of this section shall not take effect until a written agreement providing for revocation is reached between the appropriate public authority and the employee committee established herein. Nothing in this section shall preclude an appropriate public authority from agreeing to establish a health and welfare trust fund under section 15.

Except as otherwise provided in subsection (e), a contract with a health insurance carrier shall be in conformity with an agreement reached by an appropriate public authority and a public employee committee. The election by the appropriate public authority may be renewed in conformity with any successor agreement reached with a public employee committee. The public employee committee shall include a representative of each collective bargaining unit with which the political subdivision negotiates under chapter 150E and a retiree representative. Either the public employee committee or the appropriate public authority may convene the initial meeting of the committee at any time upon 30 days notice. The retiree representative shall be designated by the Retired State, County and Municipal Employees Association. The retiree representative shall have a 10 per cent vote. The remaining 90 per cent vote shall be divided so that each collective bargaining unit represented on the public employee committee shall have a weighted vote equal to the proportion which the number of employees eligible for health insurance under this chapter employed in the bargaining unit he represents bears to the total number of employees eligible for health insurance in all bargaining units of the political subdivision. An agreement with the appropriate public authority shall be approved by 70 per cent of the weighted votes of the representatives on the public employee committee and shall be binding on all subscribers and their representatives. For the purposes of this section, a health insurance carrier shall include any insurance company organized pursuant to chapter 175, hospital service corporation organized pursuant to chapter 176A, medical service corporation organized pursuant to chapter 176B, health maintenance organization organized pursuant to chapter 176G, preferred provider organization organized pursuant to chapter 176I and, in the case of a political subdivision which is partially or fully self-insured with respect to health insurance coverage, any third party administrator selected by the political subdivision, which may include, but shall not be limited to, a health insurance carrier.

An agreement approved under this section shall be binding on all active and retired employees for whom health insurance coverage is being purchased, shall supersede any conflicting provision of a collective bargaining agreement and shall not be superseded in a statutory impasse proceeding under chapter 150E, but the agreement may include procedures for resolving an impasse in negotiations for a successor agreement. A dispute arising over the interpretation or application of the public employee committee agreement under this section may be submitted to binding arbitration under the labor arbitration provisions of the American Arbitration Association upon request of the public employee committee or the appropriate public authority, except as otherwise provided in subsection (f). A request shall be approved by 70 per cent of the weighted votes of the representatives on the public employee committee as set forth in this section or, where applicable, by a majority vote of the appropriate public authority. A political subdivision which elects to provide health insurance coverage to subscribers under this section shall be deemed in full compliance with this chapter regulating the procurement of health insurance. A political subdivision which elects to provide health insurance coverage under this section pursuant to an agree-

ment approved by a public employee committee, may provide such coverage either as a single political subdivision or, under section 12, through joint purchase with other political subdivisions or, with multiple political subdivisions, through a risk-sharing pool, trust or health insurance carrier or third party administrator, or by making payments to a health and welfare trust fund to provide health insurance coverage under this section either as a single political subdivision or with multiple political subdivisions. The appropriate public authority may contract with a health insurance carrier for direct coverage of subscribers for whom the carrier's geographic service area provides appropriate access and coverage for other subscribers in accordance with subsection (d).

(b) Nothing in this section shall require, preclude or permit a change in any aspect of health insurance coverage for subscribers authorized by this section except where an agreement to provide for such change is reached by an appropriate public authority and a public employee committee in an agreement entered into or modified after the effective date of this subsection except as otherwise provided in subsection (e). In the absence of a successor agreement approved under this section, the prior agreement of the public employee committee and the appropriate public authority regarding the provision of health insurance shall remain in effect.

(c) Nothing in this section shall relieve a political subdivision from providing health insurance coverage to an employee, retiree, surviving spouse or dependent to whom it has an obligation to provide coverage under any other provision of this chapter.

(d) The agreement reached between an appropriate public authority and the public employee committee shall provide for those subscribers who, by reason of residence or domicile, cannot be appropriately served within the service area of the health insurance carrier included in the agreement, subject to this subsection.

Coverage for subscribers under this subsection shall be pursuant to and in conformity with the agreement required by this section and shall conform to all requirements of this section. The agreement reached between an appropriate public authority and the public employee committee shall provide that a subscriber who for reasons of residency is not eligible for enrollment in any such plan offered by a political subdivision shall be covered under a plan offered under chapter 176*I*, if any such plan is provided for under the agreement, but a subscriber who lives 10 miles or more from the nearest primary care physician providing care under the plan shall have out-of-pocket payments and medical deductibles limited to the amount that he would have paid had he utilized the network of medical services of the plan offered under chapter 176I. If the agreement reached between the appropriate public authority and the public employee committee provides for only health maintenance organizations or other health insurance carriers that limit enrollment to a particular geographic area, then notwithstanding any general or special law to the contrary, health maintenance organizations or other health insurance carriers shall provide for the coverage of services provided or arranged for all subscribers who do not reside within the geographic service area by providing the same benefit schedule and premium contribution provided to subscribers residing within the carrier's geographic service area including, but not limited to, covered services, out-of-pocket payments and medical deductibles for all medical services provided for or arranged under the agreement.

[First paragraph of subsection (e) effective until January 1, 2012. For text effective January 1, 2012, see below.]

(e) Where an agreement, either executed or modified, reached by an appropriate public authority and the public employee so provides, the appropriate public authority shall notify the commission that it will transfer all subscribers for whom it provides health insurance coverage to the commission. The notice shall be provided to the commission by the appropriate public authority not later than December 1 of each year and the transfer of subscribers to the commission shall take effect on the following July 1. On the effective date of the transfer, the health insurance of all subscribers, including elderly governmental retirees previously governed by section 10B of chapter 32A and retired municipal teachers previously governed by section 12 of chapter 32A, shall be provided through the commission for all purposes and governed under this section. As of the effective date and for the duration of this transfer, subscribers transferred to the commission's health insurance coverage shall receive group health insurance benefits determined exclusively by the commission and the coverage shall not be subject to collective bargaining, except

for contribution ratios which shall be determined by the written agreement.

[First paragraph of subsection (e) as amended by 2008, 377, Sec. 2A effective January 1, 2012. See 2008, 377, Sec. 10. For text effective until January 1, 2012, see above.]

(e) Where an agreement, either executed or modified, reached by an appropriate public authority and the public employee so provides, the appropriate public authority shall notify the commission that it will transfer all subscribers for whom it provides health insurance coverage to the commission. The notice shall be provided to the commission by the appropriate public authority not later than October 1 of each year and the transfer of subscribers to the commission shall take effect on the following July 1. On the effective date of the transfer, the health insurance of all subscribers, including elderly governmental retirees previously governed by section 10B of chapter 32A and retired municipal teachers previously governed by section 12 of chapter 32A, shall be provided through the commission for all purposes and governed under this section. As of the effective date and for the duration of this transfer, subscribers transferred to the commission's health insurance coverage shall receive group health insurance benefits determined exclusively by the commission and the coverage shall not be subject to collective bargaining, except for contribution ratios which shall be determined by the written agreement.

Subscribers transferred to the commission who are eligible or become eligible for Medicare coverage shall transfer to Medicare coverage, as prescribed by the commission. In the event of transfer to Medicare, the political subdivision shall pay any Medicare part B premium penalty assessed by the federal government on retirees, spouses and dependents as a result of enrollment in Medicare part B at the time of transfer into the Medicare health benefits supplement plan. For each subscriber's premium and the political subdivision's share of that premium, the subscriber and the political subdivision shall furnish to the commission, in such form and content as the commission shall prescribe, all information the commission deems necessary to maintain subscribers' and covered dependents' health insurance coverage. The appropriate public authority of the political subdivision shall perform such administrative functions and process such information as the commission deems necessary to maintain those subscribers' health insurance coverage including, but not limited to, family and personnel status changes, and shall report all changes monthly to the commission. In the event that a political subdivision transfers subscribers to the commission under this section, subscribers may be withdrawn from commission coverage at either 3 or 6-year intervals from the date of transfer of subscribers to the commission, as determined by the written agreement which shall specify the withdrawal interval and withdrawal procedures. The written agreement may specify the procedures for resolving an impasse in negotiations over whether to withdraw from commission coverage and for determining health insurance coverage and contribution ratios for subscribers for the year following withdrawal from the commission. In the event that binding arbitration is included in the written agreement, the agreement shall provide that the dispute shall be submitted to arbitration and, if no method is provided of arbitration is provided in the agreement [1], then the dispute shall be administered by the American Arbitration Association under the procedures set forth in its Labor Arbitration Rules.

The decision and notice to withdraw shall be made by October 1 of the year prior to the effective date of withdrawal. All withdrawals shall be effective on July 1 following the political subdivision's notice to the commission. Except as otherwise provided in the written agreement, withdrawal from commission coverage shall revoke acceptance of this section and any written agreements related to the implementation of this section as of the effective date of withdrawal. In the event that the acceptance of this section is revoked, the appropriate public authority of the political subdivision shall abide by all commission requirements for effectuating such withdrawal, including the notice requirements in this subsection. In the event a political subdivision withdraws from commission coverage under this section, such withdrawal shall be binding on all subscribers, including those subscribers who, prior to the transfer to the commission, received coverage from the commission under sections 10B and 12 of chapter 32A and, after withdrawal from the commission, those subscribers who received coverage from the commission under said sections 10B and 12 of said chapter 32A shall not pay more than 25 per cent of the cost of their health insurance premiums.

In the event of revocation of acceptance of this section, the political subdivision and public employee unions shall return to governance of negoti-

ations of health insurance under chapter 150E and this chapter on the effective date of withdrawal from commission coverage, to negotiate healthcare coverage for subscribers thereafter.

(f) To the extent authorized under chapter 32A, the commission shall provide group coverage of subscribers' health claims incurred after transfer to the commission. The claim experience of those subscribers shall be maintained by the commission in a single pool and combined with the claim experience of all covered state employees and retirees and their covered dependents, including those subscribers who previously received coverage under sections 10B and 12 of chapter 32A.

Notwithstanding any general or special law to the contrary, a political subdivision that self-insures its group health insurance plan under section 3A and has a deficit in its claims trust fund at the time of transferring its subscribers to the commission and the deficit is attributable to a failure to accrue claims which had been incurred but not paid may capitalize the deficit and amortize the amount over 10 fiscal years in 10 equal amounts, or on a schedule providing for a more rapid amortization. Except as provided otherwise herein, subscribers eligible for health insurance coverage under subsection (e) shall be subject to all of the terms, conditions, schedule of benefits and health insurance carriers as employees and dependents as defined by section 2 and commission regulations. The commission shall determine all matters relating to subscribers' group health insurance rights, responsibilities, costs and payments, excluding contribution ratios, and obligations, including but not limited to, the manner and method of payment, schedule of benefits, eligibility requirements and choice of health insurance carriers and these matters shall be determined exclusively by the commission and shall not be subject to collective bargaining, the written agreement under subsection (a) or to arbitration under the agreement. The commission may issue rules and regulations consistent with this section and shall provide public notice of any proposed rules and regulations and notice of thereof [2] at the request of interested parties, together with an opportunity to review those rules and regulations and an opportunity to comment on those proposed rules and regulations in writing and at a public hearing, but the commission shall not be subject to chapter 30A.

The commission shall negotiate and purchase health insurance coverage for subscribers transferred under subsection (e) and shall promulgate regulations, policies and procedures for coverage of the transferred subscribers. The schedule of benefits available to transferred subscribers shall be determined by the commission pursuant to chapter 32A. The commission shall offer those subscribers the same choice as to health insurance carriers and benefits as those provided to state employees and retirees. The political subdivision's contribution to the cost of health insurance coverage for transferred subscribers shall be as determined under this section, and shall not be subject to the provisions on contributions in said chapter 32A. Any change to the premium contribution ratios shall become effective on July 1 of each year, with notice to the commission of such change not later than January 15 of the same year.

A political subdivision that transfers subscribers to the commission shall pay the commission for all costs of its subscribers' coverage, including administrative expenses, and the governmental unit's cost of subscribers' premium. The commission shall determine on a periodic basis the amount of premium which the political subdivision shall pay to the commission. If the political subdivision unit fails to pay all or a portion of these costs according to the timetable determined by the commission, the commission may inform the state treasurer who shall issue a warrant in the manner provided by section 20 of chapter 59 requiring the respective political subdivision to pay into the treasury of the commonwealth as prescribed by the commission the amount of the premium and administrative expenses attributable to the political subdivision. The state treasurer shall recoup any past due costs from the political subdivision's cherry sheet under section 20A of chapter 58 and transfer that money to the commission. If a governmental unit fails to pay to the commission the costs of coverage for more than 90 days and the cherry sheet provides an inadequate source of payment, the commission may, at its discretion, cancel the coverage of subscribers of the political subdivision. If the cancellation of coverage is for nonpayment, the political subdivision shall provide all subscribers health insurance coverage under plans which are the actuarial equivalent of plans offered by the commission in the preceding year until there is an agreement with the public employee committee providing for replacement coverage.

The commission may charge the political subdivision an administrative fee, which shall not be more than 1 per cent of the cost of total premiums for the political subdivision, to be determined by

the commission which shall be considered as part of the cost of coverage for purposes of determining the contributions of the political subdivision and its employees to the cost of health insurance coverage by the commission.

(g) Any agreement reached between the political subdivision and the public employee committee, including an agreement to transfer subscribers to the group insurance commission, shall provide that within the same health insurance coverage plan the percentage contributed by the political subdivision to the premium or cost of health insurance coverage shall be the same for all subscribers covered under this section. These payments shall differ only by the type of coverage elected under the plan, including individual, family, optional Medicare extension or other coverage selections; but the percentage contributed by the political subdivision may vary among the different health insurance coverage plans offered under the agreement reached between the political subdivision and the public employee committee. The agreement reached shall provide that the percentage contributed by the political subdivision to the premium or cost of at least 1 Medicare extension plan available to all eligible subscribers shall be not less than the minimum percentage contributed by the political subdivision to any other health insurance coverage plan offered under the agreement reached. Any political subdivision that accepts this section shall establish by agreement with the public employee committee a contribution by the political subdivision to the premium or cost of health insurance coverage that provides for at east 50 per cent but not more than 99 per cent. Notwithstanding this subsection, where there is an agreement to transfer subscribers to the commission, subscribers whose coverage was governed by section 10B or 12 of chapter 32A before the date that the written agreement is executed, shall not be required to contribute more than 25 per cent of their health insurance premiums, but the written agreement may provide for a premium contribution paid by these subscribers of less than 25 per cent.

(h) If there is a revocation of acceptance or a withdrawal from the commission under this section, all retirees, their spouses and dependents insured or eligible to be insured by the political subdivision, if enrolled in Medicare part A at no cost to the retiree, spouse or dependents, shall be required to be insured by a Medicare extension plan offered by the political subdivision under section 11C or section 16. A retiree shall provide the political subdivision, in such form as the political subdivision shall prescribe, such information as is necessary to transfer to a Medicare extension plan. If a retiree does not submit the information required, he shall no longer be eligible for his existing health insurance coverage. The political subdivision may from time to time request from a retiree, a retiree's spouse and dependents, proof certified by the federal government of his eligibility or ineligibility for Medicare part A and part B coverage. The political subdivision shall pay the Medicare part B premium penalty assessed by the federal government on those retirees, spouses and dependents as a result of enrollment in Medicare part B at the time of transfer into the Medicare health benefits supplement plan.

(i) In the absence of a public collective bargaining unit, the chief executive officer of a municipality may authorize the transfer of subscribers to the commission.

Added by St.1993, c. 110, § 103. Amended by St.1993, c. 151, § 27; St.1993, c. 495, § 14; St.1996, c. 450, § 94; St.2007, c. 67, § 4, eff. July 25, 2007; St.2008, c. 377, § 2, eff. Nov. 7, 2008; St.2008, c. 377, § 2A, eff. Jan. 1, 2012.

1 So in original; probably should read "if no method of arbitration is provided in the agreement".

2 So in original; probably should read "notice thereof".

§ 20. Other Post Employment Benefits Liability Trust Fund; local option; funding schedule

A city, town, district, county or municipal lighting plant that accepts this section, may establish a separate fund, to be known as an Other Post Employment Benefits Liability Trust Fund, and a funding schedule for the fund. The schedule and any future updates shall be designed, consistent with standards issued by the Governmental Accounting Standards Board, to reduce the unfunded actuarial liability of health care and other post-employment benefits to zero as of an actuarially acceptable period of years and to meet the normal cost of all such future benefits for which the governmental unit is obligated. The schedule and any future updates shall be: (i) developed by an actuary retained by a municipal lighting plant or any other governmental unit and triennially reviewed by the board for a municipal lighting plant or by the chief executive officer of a governmental unit; and (ii) reviewed and approved by the actuary in the public employee retirement administration commission.

The board of a municipal lighting plant or the legislative body of any other governmental unit

may appropriate amounts recommended by the schedule to be credited to the fund. Any interest or other income generated by the fund shall be added to and become part of the fund. Amounts that a governmental unit receives as a sponsor of a qualified retiree prescription drug plan under 42 U.S.C. 1395w-132 may be added to and become part of the fund.

The custodian of the fund shall be: (i) a designee appointed by the board of a municipal lighting plant; or (ii) the treasurer of any other governmental unit. Funds shall be invested and reinvested by the custodian consistent with the prudent investor rule set forth in chapter 203C.

This section may be accepted in a city having a Plan D or Plan E charter by vote of the city council; in any other city by vote of the city council and approval of the mayor; in a town by vote of the town at a town meeting; in a district by vote of the governing board; in a municipal lighting plant by vote of the board; and in a county by vote of the county commissioners.

Added by St.2008, c. 479, eff. Jan. 10, 2009.

CHAPTER 35

COUNTY TREASURERS, STATE SUPERVISION OF COUNTY ACCOUNTS AND COUNTY FINANCES

Selected section

Section
30. Taxes; approval; computation.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 30. Taxes; approval; computation

The amount which the county commissioners of each county, except Suffolk and Nantucket, shall levy as the county tax shall be as voted by the county commissioners and approved by the advisory board on county expenditures, and as computed by adding together the amounts of the approved annual budget and of any approved supplementary budget, so far as the money therefore is to be raised by taxation, and deducting therefrom the probable receipts from all sources, except loans, and so much of the unexpended balance from the county treasury at the closing of the treasurer's books for the previous fiscal year as is in excess of ten per cent of the tax levy for said year; provided, however, that the county commissioners shall deduct the unexpended balance from the previous fiscal year from the tax voted by the county commissioners and approved by the advisory board prior to the apportionment and assessment of said tax among and upon the several cities and towns. The county commissioners shall also levy annually as the county tax a sum sufficient to meet the debt and interest maturing in that year, if no other provision therefor has been made.

Amended by St.1939, c. 501, § 3; St.1943, c. 39; St.1945, c. 158, § 3; St.1969, c. 849, § 14; St.1975, c. 582, § 1; St.1978, c. 211; St.1981, c. 351, § 146.

Historical and Statutory Notes

St.1897, c. 153, § 8.
R.L.1902, c. 21, § 29.
St.1922, c. 127.

CHAPTER 39

MUNICIPAL GOVERNMENT

Section
1. Allocation of powers.
2. Presiding officer of board of aldermen; voting rights.
3. Elections of city officers by municipal bodies; manner of voting.
4. Mayor to sign every ordinance; veto power; effect.
5. Performance of mayoralty duties during vacancy.
6. Election warrants; issuance; acceptance of provisions of section.
6A. Municipal salaries; increases and decreases; procedure.
7. Holding other offices.
8. Compatibility of offices.
8A. Removal of officers; procedure; exception.
9. Annual meeting; other meetings; election of officers; times; adjournment; holidays.
9A. Election of officers and other matters determined by ballot; meetings; time and place; warrants.
10. Warrant; issuance; contents.
11. Persons authorized to call meetings upon resignation of selectmen.
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13. Quorum; application of section.
14. Moderators; election; tenure; vacancies; assistant moderators.
15. Moderators; powers and duties.
16. Appropriation, advisory or finance committees; appointment; tenure; powers and duties.
17. Powers of moderator; preservation of order.
18. Duties of moderators; reception of votes.
19. Repealed.
20. Precinct voting.
21. Canvass of returns.
22, 23. Repealed.
23A to 23C. Repealed.
23D. Adjudicatory hearings; attendance by municipal board, committee and commission members; voting disqualification.
24. Application of chapter.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Allocation of powers

Except as otherwise provided by law, city councils shall have the powers of towns; boards of aldermen shall have the powers, perform the duties and be subject to the liabilities of selectmen, except with respect to appointments, and the mayor shall have the powers, perform the duties and be subject to the liabilities of selectmen with respect to appointments, but all his appointments shall be subject to confirmation and rejection by the aldermen, and upon the rejection of a person so appointed the mayor shall within one month thereafter make another appointment. In cities having a single legislative board other than a board of aldermen, such board shall, so far as appropriate and not inconsistent with the express provisions of any general or special law, have the powers, perform the duties and be subject to the liabilities of the board of aldermen.

Historical and Statutory Notes

G.S.1860, c. 19, § 2.
St.1876, c. 80.
P.S. 1882, c. 28, §§ 2, 5.
R.L.1902, c. 26, §§ 2, 3, 8.

§ 2. Presiding officer of board of aldermen; voting rights

If the mayor acts as presiding officer of the board of aldermen, he shall not vote in meetings of said board nor in conventions of the two branches of the city council. The board of aldermen may elect one of its number as president, who shall, in the absence of the mayor, preside at meetings of the board. This section shall apply to every city, notwithstanding any special law enacted prior to April twenty-ninth, eighteen hundred and eighty-two.

Historical and Statutory Notes

St.1876, c. 193, § 2.
P.S.1882, c. 28, § 7.
St.1882, c. 180.
R.L.1902, c. 26, § 11.

§ 3. Elections of city officers by municipal bodies; manner of voting

No election of a city officer by a municipal body or board shall be valid unless made by a viva voce vote, each member present answering to his name when called by the clerk or other proper officer, stating the name of the person for whom he votes, or that he declines to vote. The clerk or other proper officer shall record every such vote.

Historical and Statutory Notes

St.1899, c. 129.
St.1899, c. 170.
R.L.1902, c. 26, § 7.

§ 4. Mayor to sign every ordinance; veto power; effect

Every ordinance, order, resolution or vote requiring the concurrence of the board of aldermen

and of the common council, except the question of a convention of the two branches or of the election of an officer, shall be presented to the mayor. If he approves it, he shall sign it; if he disapproves it, he shall return it, with his written objections, to the branch wherein it originated, which shall enter such objections at large on its records and again consider it; and if two thirds of the members present and voting pass it, notwithstanding such objections, it shall, if not originally requiring concurrent action, be in force; but if originally requiring concurrent action, it shall be sent, with the objections of the mayor, to the other branch, where it shall be again considered, and if passed by two thirds of the members present and voting, it shall be in force; but in all cases the vote shall be by yeas and nays. Such ordinance, order, resolution or vote shall be in force if not returned by the mayor within ten days after it has been presented to him. This section shall not apply to budgets submitted under section thirty-two of chapter forty-four, or to appropriations by a city council under section thirty-three of said chapter.

Historical and Statutory Notes

St.1873, c. 139.
St.1876, c. 193, § 1.
P.S. 1882, c. 28, § 6.
R.L.1902, c. 26, § 9.

§ 5. Performance of mayoralty duties during vacancy

Except as otherwise provided by city charters, upon the death, resignation or absence of the mayor, or his inability to perform the duties of his office, the president of the board of aldermen shall perform them; and if there is no such officer, or if he also is absent or unable from any cause to perform them, they shall be performed by the president of the common council, or, if there is no such officer, or if he is absent or unable to perform such duties, by such alderman as the board of aldermen may from time to time elect, until the mayor or the president of the board of aldermen is able to attend to said duties or until the vacancy is filled. The person upon whom such duties devolve shall be called "acting mayor" and shall possess the powers of mayor only in matters not admitting of delay, and shall not make permanent appointments.

Historical and Statutory Notes

St.1882, c. 182, §§ 1, 2.
St.1896, c. 380, §§ 1, 2.
R.L.1902, c. 26, §§ 29, 30.

§ 6. Election warrants; issuance; acceptance of provisions of section

If, at or after the time for the mayor and aldermen to enter upon the performance of their duties, it appears that the mayor or the full number of aldermen has not been elected, such of said officers as have been elected shall issue warrants for the election of a mayor or of aldermen as the case may be. If none of said officers has been elected, the president of the common council shall issue such warrants. If no mayor has been elected, the president of the board of aldermen shall perform the duties of the office until a mayor is chosen and sworn. If there is a vacancy in the board of aldermen, in the common council, or in a city or ward office which is to be filled by an election of the people, the board of aldermen shall issue their warrant for an election to fill such vacancy at a time and place designated by them. A city officer shall, notwithstanding his removal from one ward of the city to another, continue to perform his official duties during his term of office. This section shall not be in effect in any city unless the city council accepts it or has accepted corresponding provisions of earlier laws.

Historical and Statutory Notes

St.1845, c. 217, §§ 1, 2, 4.
St.1854, c. 448, § 33.
G.S.1860, c. 19, §§ 6 to 8, 10, 11, 17.
P.S.1882, c. 28, §§ 17 to 19, 21, 22.
St.1882, c. 164.
R.L.1902, c. 8, § 5(10); c. 26, §§ 31 to 34.

§ 6A. Municipal salaries; increases and decreases; procedure

Notwithstanding the provisions of any city charter to the contrary, the mayor and the members of the city council, or other legislative body of a city, shall receive for their services such salary as the city council or other legislative body of a city shall by ordinance determine, and shall receive no other compensation from such city, except that a member of a city council of said city may receive a salary for serving as an instructor in a municipal college of such city, except that a member of a city or town council in a municipality with a city or town council form of government may receive a salary for serving as a municipal employee of said municipality in lieu of receiving compensation for serving as a member of said council and except that, in accordance with the provision of the seventh paragraph of section twenty of chapter two hundred and sixty-eight A, any elected municipal official, other than a mayor, may choose to receive

either the compensation for such service or compensation for service as an employee of a housing authority in such municipality, but may not receive both. No increase or reduction in such salaries shall take effect during the year in which such increase or reduction is voted, and no change in such ordinance shall be made between the election of a new council or other legislative body and the qualification of the new council or other legislative body. Such ordinance shall be subject to the provisions of sections forty-two, forty-three and forty-four of chapter forty-three.

Added by St.1952, c. 259, § 1. Amended by St.1958, c. 72, § 1; St.1958, c. 513, § 1; St.1963, c. 731, § 2; St.1979, c. 199; St.1985, c. 252, § 1; St.1987, c. 374, § 1; St.1999, c. 7, § 1.

§ 7. Holding other offices

The mayor or an alderman or a member of the common council of a city which adopts this section or has adopted corresponding provisions of earlier laws, may at the same time hold any other office under the city government to which he may be chosen, except one of emolument.

Historical and Statutory Notes

St.1851, c. 70.
G.S.1860, c. 19, § 12.
P.S.1882, c. 28, § 23.
R.L.1902, c. 26, § 35.

§ 8. Compatibility of offices

No member of the city council shall, during the term for which he was chosen, either by appointment or by election of the city council or of either branch thereof, be eligible to any office the salary of which is payable by the city.

Historical and Statutory Notes

St.1886, c. 117.
R.L.1902, c. 26, § 36.

§ 8A. Removal of officers; procedure; exception

Unless otherwise provided in any general law or in any special law relating to a city, any officer or official appointed or elected by the city council may be removed by said council for cause after a public hearing, written notice of which shall be given said officer or official fourteen days, at least, prior to the date thereof. This section shall not apply to any officer or official who is subject to the provisions of chapter thirty-one.

Added by St.1950, c. 132, § 1.

§ 9. Annual meeting; other meetings; election of officers; times; adjournment; holidays

Except as otherwise provided by special law or a charter adopted or revised or amended under Sections two, three, or four of Article LXXXIX of the Amendments to the Constitution of the Commonwealth which may provide for a different time for the election of town officials and other matters to be determined by ballot, the annual meeting of each town shall be held in February, March, April, May or June; and other meetings may be held at such times as the selectmen may order or the charter or by-law prescribe; provided, however, that, notwithstanding the provisions of this section or of any other law, by-law, or charter to the contrary, a town, by the vote of its board of selectmen or town council may delay the annual town meeting; and provided, further, that such a delayed annual town meeting shall complete its business on or before June thirtieth. Town meetings shall be held within the geographic limits of the town unless a special law, charter or by-law provides otherwise; provided, however, that any meeting for the election by ballot of federal, state or other officers or the determination of other matters that are to be determined by ballot at an election shall be held within the geographic limits of the town. Meetings may be adjourned from time to time and meet and adjourn to any place authorized by law provided that officers shall be elected, and matters required by law to be elected or determined by ballot, shall be so elected or determined during the hours during which polls shall remain open as hereinafter provided. If the day set for a town meeting by by-law or otherwise falls on a legal holiday, such meetings shall be held on the day following. A town may by by-law designate the hour at which the annual town meeting shall be called and subject to section sixty-four of chapter fifty-four by vote or by-law designate the hours during which polls shall remain open in meetings for the election of officers and the determination of other matters that are required by law to be determined by ballot.

Amended by St.1969, c. 10; St.1969, c. 849, § 23; St.1974, c. 8, § 1; St.1985, c. 9, § 1; St.1989, c. 341, § 17; St.1996, c. 448, § 1; St.2008, c. 85, § 1, eff. July 14, 2008.

Historical and Statutory Notes

St.1785, c. 75, § 10.
R.S.1836, c. 15, §§ 18, 25.
St.1837, c. 52.
G.S.1860, c. 18, § 20.

P.S.1882, c. 27, § 53.
St.1890, c. 423, § 209.
St.1893, c. 417, § 259.
St.1898, c. 548, § 324.
R.L.1902, c. 11, § 327.
St.1907, c. 560, §§ 355, 456.
St.1913, c. 835, §§ 393, 503.

§ 9A. Election of officers and other matters determined by ballot; meetings; time and place; warrants

Except as otherwise provided by special law or a charter adopted or revised or amended under Sections two, three or four of Article LXXXIX of the Amendments to the Constitution of the Commonwealth, a town may provide by charter or by-law that the election of town officials and other matters to be determined by ballot shall take place in February, March, April, May or June before or after the annual meeting held for the transaction of other business, provided said annual meeting for the transaction of other business is also held or commences in February, March, April, May or June. The time and place of holding such election and vote and meeting for the transaction of other business may be stated in one warrant for the annual town meeting if called within thirty-five days of each other and such election and vote shall be deemed parts of the annual town meeting. If the election and other matters to be determined upon by ballot and the annual meeting for the transaction of other business are more than thirty-five days apart, separate warrants shall be used.
Added by St.1974, c. 8, § 2. Amended by St.2008, c. 85, § 2, eff. July 14, 2008.

§ 10. Warrant; issuance; contents

Every town meeting or town election, except as hereinafter provided, shall be called in pursuance of a warrant, under the hands of the selectmen, notice of which shall be given at least seven days before the annual meeting or an annual or special election and at least fourteen days before any special town meeting. The warrant shall be directed to the constables or to some other persons, who shall forthwith give notice of such meeting in the manner prescribed by the by-laws, or, if there are no by-laws, by a vote of the town, or in a manner approved by the attorney general. The warrant for all town meetings shall state the time and place of holding the meeting and the subjects to be acted upon thereat. The town meeting may be held in one or more places; provided, that if it is held in more than one place, the places are connected by means of a public address system and loud speakers so that the proceedings in all such places may be heard and participated in by all the voters present therein. Whenever the moderator determines that voters are being excluded from the town meeting because there is no room for them in the places provided or that voters in attendance are being deprived of the opportunity to participate therein for any reason whatsoever, he shall either, on his own motion recess the meeting for any period during the day of the meeting or, after consultation with the members of the board of selectmen then present, adjourn the same to another date, not later than fourteen days following the date of said meeting, when places and facilities sufficient to accommodate all voters attending and to enable them to participate therein shall be available. The selectmen shall insert in the warrant for the annual meeting all subjects the insertion of which shall be requested of them in writing by ten or more registered voters of the town and in the warrant for every special town meeting all subjects the insertion of which shall be requested of them in writing by one hundred registered voters or by ten per cent of the total number of registered voters of the town whichever number is the lesser. The selectmen shall call a special town meeting upon request in writing, of two hundred registered voters or of twenty per cent of the total number of registered voters of the town, whichever number is the lesser; such meeting to be held not later than forty-five days after the receipt of such request, and shall insert in the warrant therefor all subjects the insertion of which shall be requested by said petition. No action shall be valid unless the subject matter thereof is contained in the warrant. Two or more distinct town meetings for distinct purposes may be called by the same warrant.

The written requests of registered voters for the insertion of subjects in town meeting warrants shall not be valid unless the required number of registered voters not only sign their names but also state their residence, with street and number, if any. The selectmen shall submit such written requests to the board of registrars of voters or the board of election commissioners who shall check and forthwith certify the number of signatures so checked which are names of voters in the town, and only names so checked and certified shall be counted. A greater number of names than are required in each case need not be certified.
Amended by St.1935, c. 403, § 1; St.1939, c. 182; St.1949, c. 152, § 1; St.1954, c. 32; St.1959, c. 64, § 1; St.1963, c. 169; St.1964, c. 1, § 1; St.1974, c. 28; St.1976, c. 272, § 1; St.1981, c. 34; St.1981, c. 386, § 1; St.1990, c. 526, § 4.

Historical and Statutory Notes

St.1785, c. 75, § 5.
R.S.1836, c. 15, §§ 19 to 22.
G.S.1860, c. 18, §§ 21, 22.
P.S.1882, c. 27, §§ 54, 55.
St.1890, c. 423, §§ 210, 211.
St.1893, c. 417, § 260.
St.1898, c. 548, § 325.
R.L.1902, c. 11, § 328.
St.1907, c. 560, §§ 356, 456.
St.1913, c. 835, §§ 394, 503.
St.1917, c. 221, § 1.
St.1920, c. 591, § 1.

§ 11. Persons authorized to call meetings upon resignation of selectmen

If a majority of the selectmen or any less number shall vacate their offices, or if the full number shall fail to be elected or qualified, the selectmen in office may call a town meeting. If there are no remaining selectmen, the town clerk may call it; and, if there is no town clerk, a justice of the peace may call it in the manner prescribed in the following section.

Historical and Statutory Notes

St.1785, c. 75, § 5.
R.S.1836, c. 15, § 24.
G.S.1860, c. 18, § 24.
P.S.1882, c. 27, § 57.
St.1890, c. 423, § 213.
St.1893, c. 417, § 261.
St.1898, c. 548, § 326.
R.L.1902, c. 11, § 329.
St.1907, c. 560, §§ 357, 456.
St.1913, c. 835, §§ 395, 503.
St.1918, c. 291, § 24.

§ 12. Persons authorized to call meetings upon refusal of selectmen

If the selectmen unreasonably refuse to call a town meeting, a justice of the peace, upon written application of one hundred registered voters or of ten per cent of the total number of registered voters of the town, may call a meeting by a warrant under his hand, stating the subjects to be acted upon, directed to the constables of the town if there are any, otherwise to any of the persons applying therefor, directing them to summon the inhabitants qualified to vote in town affairs to assemble at the time and place and for the purposes expressed in the warrant. In a town having a form of representative town meeting government a special town meeting called under this section shall be conducted as a representative town meeting, and notice thereof shall be given to the town meeting members as provided by law.

Amended by St.1964, c. 193.

Historical and Statutory Notes

St.1785, c. 75, § 5.
R.S.1836, c. 15, § 23.
G.S.1860, c. 18, § 23.
P.S.1882, c. 27, § 56.
St.1890, c. 423, § 212.
St.1893, c. 417, § 262.
St.1898, c. 548, § 327.
R.L.1902, c. 11, § 330.
St.1907, c. 560, §§ 358, 456.
St.1913, c. 835, §§ 396, 503.
St.1917, c. 221, § 2.

§ 13. Quorum; application of section

Towns may prescribe by by-law the number of voters necessary to constitute a quorum at town meetings; provided, that a number less than a quorum may from time to time adjourn the same. This section shall not apply to such parts of meetings as are devoted exclusively to the election of town officers.

Historical and Statutory Notes

St.1912, c. 308.
St.1921, c. 486, § 5.
St.1925, c. 66.

§ 14. Moderators; election; tenure; vacancies; assistant moderators

At every town meeting when moderators are not elected for the term of one or three years, a moderator shall first be elected. The election of a moderator at a meeting for the choice of town officers shall be by ballot, and the voting list shall be used thereat.

Any town or district which has so voted or hereafter so votes may at any annual election of town or district officers elect from the registered voters thereof by ballot a moderator to preside at all town or district meetings. His term of office shall begin as soon as he is qualified, and shall continue until the next annual town or district meeting and until his successor is qualified. Any town or district which has elected a moderator for the term of one year shall thereafter elect a moderator at every annual election of town or district officers, unless the town or district votes to discontinue the electing of moderators for said term.

If a vacancy in the said office occurs during any term, it may be filled by the voters of the town or district. If a moderator so elected is absent, a temporary moderator may be elected.

In towns or districts where official ballots are used, the vote to elect a moderator for the term of one year shall be taken at a meeting held at least thirty days before the annual town or district meet-

ing at which the vote is to become operative; and at the first annual meeting after the town or district has so voted a moderator shall be chosen as herein provided to serve at that meeting, and the moderator elected on the official ballot at that meeting shall act at subsequent town or district meetings until his successor is qualified.

At every town or district meeting until a moderator or temporary moderator is elected, the clerk of the town or district shall preside; but if he is absent or if there is no clerk, the chairman of the selectmen or prudential committee or body exercising similar powers, if present, otherwise the senior member present in point of continuous service, shall preside; but if no selectman or member of said committee or body is present, the justice of the peace calling such meeting, if the meeting is so called, shall preside. Such presiding officer shall have the powers and perform the duties of a moderator.

If, as provided for in section ten, a town meeting is held in separate places equipped with a public address system and loud speaker facilities, the moderator may appoint an assistant moderator to preside at each place of meeting whereat the moderator is not present. The assistant moderator shall have all the powers vested by law in the moderator to preside at and regulate the proceedings in the meeting at which he presides except that he shall not recognize any citizen desiring to address the meeting except after first obtaining permission of the moderator.

The word "district", as used in this section, so far as apt, shall be construed as it is defined in section one A of chapter forty.

Amended by St.1943, c. 453, §§ 1, 2; St.1949, c. 152, § 2; St.1959, c. 64, § 2; St.1969, c. 505, §§ 1, 2.

Historical and Statutory Notes

St.1785, c. 75, § 6.
St.1811, c. 9, § 2.
St.1831, c. 50.
R.S.1836, c. 15, §§ 26, 27, 34.
G.S.1860, c. 18, §§ 25, 26, 32.
P.S.1882, c. 27, §§ 58, 59, 80.
St.1887, c. 371, § 1.
St.1890, c. 423, §§ 214 to 216.
St.1893, c. 417, §§ 263, 273.
St.1898, c. 548, §§ 328, 338.
R.L.1902, c. 11, §§ 331, 342.
St.1902, c. 346, §§ 1, 3.
St.1907, c. 560, §§ 359, 370, 456.
St.1913, c. 835, §§ 397, 410, 503.
St.1917, c. 49.
St.1918, c. 257, § 154.
St.1919, c. 5.
St.1920, c. 2.

§ 15. Moderators; powers and duties

The moderator shall preside and regulate the proceedings, decide all questions of order, and make public declaration of all votes, and may administer in open meeting the oath of office to any town officer chosen thereat. If a vote so declared is immediately questioned by seven or more voters, he shall verify it by polling the voters or by dividing the meeting unless the town has by a previous order or by-law provided another method. If a two thirds, four fifths or nine tenths vote of a town meeting is required by statute, the count shall be taken, and the vote shall be recorded in the records by the clerk; provided, however, that a town may decide by by-law or vote not to take a count and record the vote if a two-thirds vote of a town meeting is required by statute; and provided, further, that if the vote is unanimous, a count need not be taken, and the clerk shall record the vote as unanimous.

A town may pass by-laws, subject to this section, for the regulation of the proceedings at town meetings. Such by-laws shall be approved and published in the manner prescribed by section thirty-two of chapter forty.

In any town having a representative town meeting form of government the town meeting members shall not use the secret ballot when voting in the exercise of the corporate powers of said town or on any motion unless two thirds of the town meeting members present and voting thereon vote that a secret ballot be used.

Amended by St.1963, c. 320; St.1966, c. 73; St.1970, c. 78, § 1; St.1996, c. 448, § 2.

Historical and Statutory Notes

St.1785, c. 75, § 6.
R.S.1836, c. 15, §§ 28, 32.
G.S.1860, c. 18, § 27.
P.S.1882, c. 27, § 60.
St.1890, c. 423, § 217.
St.1893, c. 417, § 264.
St.1898, c. 548, § 329.
R.L.1902, c. 11, § 332.
St.1907, c. 560, §§ 360, 456.
St.1912, c. 252.
St.1913, c. 835, §§ 398, 503.
St.1918, c. 291, § 25.
St.1919, c. 176.

§ 16. Appropriation, advisory or finance committees; appointment; tenure; powers and duties

Every town whose valuation for the purpose of apportioning the state tax exceeds one million dollars shall, and any other town may, by by-law

provide for the election or the appointment and duties of appropriation, advisory or finance committees, who shall consider any or all municipal questions for the purpose of making reports or recommendations to the town; and such by-laws may provide that committees so appointed or elected may continue in office for terms not exceeding three years from the date of appointment or election.

In every town having a committee appointed under authority of this section, such committee, or the selectmen if authorized by a by-law of the town, and, in any town not having such a committee, the selectmen, shall submit a budget at the annual town meeting.

Amended by St.1950, c. 56.

Historical and Statutory Notes

St.1910, c. 130, § 1.
St.1923, c. 388.
St.1929, c. 276.

§ 17. Powers of moderator; preservation of order

No person shall address a town meeting without leave of the moderator, and all persons shall, at the request of the moderator, be silent. If a person, after warning from the moderator, persists in disorderly behavior, the moderator may order him to withdraw from the meeting, and, if he does not withdraw, may order a constable or any other person to remove him and confine him in some convenient place until the meeting is adjourned.

Historical and Statutory Notes

St.1785, c. 75, § 6.
R.S.1836, c. 15, §§ 29, 30.
G.S.1860, c. 18, §§ 28, 29.
P.S.1882, c. 27, §§ 61, 62.
St.1890, c. 423, §§ 218, 220.
St.1893, c. 417, § 265.
St.1898, c. 548, § 330.
R.L.1902, c. 11, § 333.
St.1907, c. 560, §§ 361, 456.
St.1913, c. 835, §§ 399, 503.

§ 18. Duties of moderators; reception of votes

The moderator shall receive the vote of any person whose name is on the voting list or who presents a proper certificate from the registrars of voters.

Historical and Statutory Notes

St.1822, c. 104, § 5.
R.S.1836, c. 3, § 10.
G.S.1860, c. 7, § 11.
P.S.1882, c. 7, § 11.
St.1890, c. 423, § 223.
St.1893, c. 417, § 281.
St.1898, c. 548, § 346.
R.L.1902, c. 11, § 350.
St.1907, c. 560, §§ 378, 456.
St.1913, c. 835, §§ 418, 503.

§ 19. Repealed, 1934, 39, Sec. 1

§ 20. Precinct voting

Towns divided into voting precincts may, for their annual town election, establish precinct voting for all town officers to be chosen thereat, by accepting this section at a meeting held seventy days at least before the annual town meeting. The acceptance of this section or corresponding provisions of earlier laws may be revoked by the town at a meeting held seventy days at least before the annual town meeting; and if so revoked this section shall cease to be in force therein. Towns by vote or by-law may authorize voting precincts at special elections of town officers.

Amended by St.1934, c. 39, § 2; St.1973, c. 1136; St.1974, c. 8, § 3.

St.1894, c. 132, §§ 1, 2, 4.
St.1898, c. 548, § 349.
R.L.1902, c. 11, § 353.
St.1907, c. 560, §§ 381, 456.
St.1913, c. 431.
St.1913, c. 835, §§ 421, 503.
St.1918, c. 291, § 29.

§ 21. Canvass of returns

The town clerk and the board of registrars, upon receipt of the returns from the several precincts, shall forthwith canvass the same, and immediately declare the result.

Historical and Statutory Notes

St.1894, c. 132, § 2.
St.1895, c. 89, § 1.
St.1898, c. 548, § 350.
R.L.1902, c. 11, § 354.
St.1907, c. 560, §§ 382, 456.
St.1913, c. 835, §§ 422, 503.

§§ 22, 23. Repealed, 1974, 8, Sec. 4

Historical and Statutory Notes

See, now, c. 39, §§ 9, 9A.

§§ 23A to 23C. Repealed, 2009, 28, Sec. 20

§ 23D. Adjudicatory hearings; attendance by municipal board, committee and commission members; voting disqualification

(a) Notwithstanding any general or special law to the contrary, upon municipal acceptance of this section for 1 or more types of adjudicatory hear-

ings, a member of any municipal board, committee or commission when holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate or otherwise supersede applicable quorum requirements.

(b) By ordinance or by-law, a city or town may adopt minimum additional requirements for attendance at scheduled board, committee, and commission hearings under this section.

Added by St.2006, c. 79, eff. Aug. 10, 2006.

§ 24. Application of chapter

The provisions of this chapter shall be in force only so far as they are not inconsistent with the express provisions of any general or special law; and, so far as apt, shall apply to districts as defined in section one A of chapter forty.

Amended by St.1970, c. 78, § 2.

CHAPTER 40

POWERS AND DUTIES OF CITIES AND TOWNS

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The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Nature and scope

Cities and towns shall be bodies corporate, and, except as otherwise expressly provided, shall have the powers, exercise the privileges and be subject to the duties and liabilities provided in the several acts establishing them and in the acts relating thereto. Except as otherwise expressly provided, cities shall have all the powers of towns and such additional powers as are granted to them by their charters or by general or special law, and all laws relative to towns shall apply to cities.

Historical and Statutory Notes

St.1785, c. 75, § 9.
R.S.1836, c. 2, § 6, cl. 17; c. 15, §§ 8, 86.
G.S.1860, c. 3, § 7, cl. 17; c. 18, § 1; c. 19, §§ 1, 2.
P.S.1882, c. 3, § 3, cl. 23; c. 27, § 1; c. 28, §§ 1, 2.
R.L.1902, c. 26, §§ 1, 2.

§ 1A. District defined

Except as otherwise expressly provided, the word "district" as used in this chapter shall mean a fire, water, sewer, water pollution abatement, refuse disposal, light, or improvement district, or any other district, howsoever named, formed for the purpose of carrying out any of the aforementioned functions, whether established under general law or special act.

Added by St.1967, c. 44, § 1. Amended by St.1969, c. 505, § 3.

§ 1B. Districts; power to sue and be sued; insurance; defense of civil actions

A district may sue and be sued by its name to the same extent and upon the same conditions as a city or town.

Districts shall have the power and authority to assess member cities and towns for the purpose of paying a proper charge to effect insurance for payment of damages or for the purpose of paying a proper charge for payment of damages incurred pursuant to chapter two hundred and fifty-eight, and shall have the power and authority to defend civil actions brought against them pursuant to said chapter.

Added by St.1978, c. 512, § 7.

§ 2. Towns; power to sue and be sued

A town may in its corporate capacity sue and be sued by its name, and may appoint necessary agents therefor.

Historical and Statutory Notes

St.1694–5, c. 15, §§ 1, 2.
St.1783, c. 39, § 4.
St.1785, c. 75, § 8.
R.S.1836, c. 15, § 10.
G.S.1860, c. 18, § 8.
P.S.1882, c. 27, § 8.
R.L.1902, c. 25, § 12.

§ 3. Towns; power to hold, lease and convey property

A town may hold real estate for the public use of the inhabitants and may convey the same by a deed of its selectmen thereto duly authorized, or by a deed of a committee or agent thereto duly authorized; may by its selectmen let or lease for not more than 30 years, on such terms as the selectmen determine, a public building or part thereof, except schoolhouses in actual use as such; may by its selectmen let or lease for not more than twenty-five years, real estate to the Massachusetts Bay Transportation Authority for use by the authority as a parking lot for commuters; may hold personal estate for the public use of the inhabitants, and alienate and dispose of the same; may hold real and personal estate in trust for the support of schools, and for the promotion of education, within the limits of the town; may receive, hold and manage any devise, bequest or gift for the establishment or equipment of memorials for properly commemorating the services of the soldiers, sailors and marines who have served the country in war, and for the establishment or maintenance of any reading room for which it may grant money under the provisions of section five; and may make such orders as it may deem necessary or expedient for the disposal or use of its corporate property. All real estate or personal property of the town, not by law or by vote of the town placed in the charge of any particular board, officer or department, shall be under the control of the selectmen, except as is otherwise provided in this section or section nine.

Notwithstanding the provisions of this section, a city or town, with the approval of the school committee, may rent or lease any school building not in actual use and, with the approval of the commissioner of education, surplus space in a school building in actual use to any one or more public or private profit-making businesses or nonprofit organizations; provided, however, that joint occupancy of a school building in actual use as such shall not interfere with educational programs being conducted in said building. The terms of any such rental or lease shall be as approved by the school committee; provided, however, that no school building not in actual use shall be rented or leased for an initial term longer than ten years, but with renewal options if approved by the school committee.

The monies received from such rental or lease shall be kept separate and apart from other city or town funds in the city or town treasury and may be expended by the school committee without further appropriation for the upkeep of the facility so rented or surplus space which is so rented; provided, however, that any balance remaining in such account at the close of a fiscal year shall be paid into the General Fund of such city or town; and, provided further, that in any city or town that accepts this proviso, any such balance shall remain in said account and may be expended for the upkeep and maintenance of any facility under the control of the school committee.

Amended by St.1976, c. 191; St.1981, c. 496; St.1982, c. 634, § 6; St.1988, c. 15, § 53; St.1989, c. 706; St.1993, c. 151, § 28; St.2010, c. 188, § 22, eff. July 27, 2010.

Historical and Statutory Notes

R.S.1836, c. 15, § 11.
G.S.1860, c. 18, § 9.
St.1880, c. 111, § 1.
P.S.1882, c. 27, § 9.
St.1885, c. 60.
St.1891, c. 218.
St.1901, c. 152.
R.L.1902, c. 25, § 13.
St.1907, c. 232, § 1.
St.1919, c. 61, § 1.
St.1919, c. 352.
St.1920, c. 292, § 1.
St.1920, c. 591, § 11.

§ 3A. Cities, towns and districts; binding effect thereon of recordable instruments of title affecting interests in real estate as to good faith purchasers notwithstanding inconsistency of law therewith

Any recordable instrument purporting to affect an interest in real estate, title to which is held by a city, town, district or regional school district, executed in the name of a town by its selectmen, in the name of a city by its mayor or by its city manager in the case of a city having a Plan D or Plan E charter, or in the name of a district or regional school district by the chairman of its prudential committee or other governing board or by any agent or committee authorized by particular vote of the city, town or district or in the case of a municipality acting by or through an industrial development financing authority as provided in section seven of chapter forty D by vote of the board of directors of said authority, shall be binding on the city, town, district or regional school district in favor of a purchaser or other person relying in good faith on such instrument notwithstanding inconsistent provisions of general or special law, the city or town charter, by-laws, resolutions or votes.

Added by St.1973, c. 160.

§ 4. Towns; power to contract; purposes

A city or town may make contracts for the exercise of its corporate powers, on such terms and conditions as are authorized by the town meeting in a town, the town council in a town without a town meeting, the city council in a city with the approval of the mayor or the city council in a Plan D or Plan E city with the approval of the manager, or as otherwise authorized in accordance with a duly adopted charter. A city or town may not contract for any purpose, on any terms, or under any conditions inconsistent with any applicable provision of any general or special law.

Amended by St.1932, c. 271, § 6; St.1941, c. 351, § 3; St.1946, c. 358, § 1; St.1950, c. 521; St.1951, c. 798, §§ 1, 2; St.1954, c. 33; St.1957, c. 227, § 1; St.1958, c. 613, § 2A; St.1961, c. 307; St.1961, c. 313; St.1963, c. 115; St.1965, c. 50; St.1965, c. 874, § 3; St.1966, c. 63, §§ 1, 2; St.1966, c. 202, § 1; St.1966, c. 381; St.1968, c. 621; St.1969, c. 412; St.1969, c. 758, §§ 1 to 4; St.1969, c. 849, § 24; St.1970, c. 238; St.1970, c. 674; St.1971, c. 3; St.1971, c. 71; St.1971, c. 128; St.1971, c. 952; St.1972, c. 25; St.1973, c. 6; St.1974, c. 260, § 1; St.1974, c. 693; St.1974, c. 715; St.1975, c. 46; St.1975, c. 74; St.1977, c. 421; St.1978, c. 119, § 1; St.1978, c. 575; St.1979, c. 281; St.1979, c. 796, § 5; St.1980, c. 261, §§ 1C, 1D; St.1981, c. 307; St.1981, c. 351, § 119; St.1981, c. 628, § 2; St.1984, c. 52; St.1989, c. 687, § 7; St.1989, c. 710.

Historical and Statutory Notes

R.S.1836, c. 15, § 11.
G.S.1860, c. 18, § 9.
P.S.1882, c. 27, § 9.
St.1889, c. 377.
St.1890, c. 119.
St.1895, c. 217.
R.L.1902, c. 25, § 14.
St.1902, c. 544, § 6.
St.1918, c. 291, § 1.
St.1926, c. 67.
St.1928, c. 155, § 1.
St.1929, c. 323.

§ 4A. Governmental units; joint operation of public activities; termination of agreement; "governmental unit" defined; financial safeguards

The chief executive officer of a city or town, or a board, committee or officer authorized by law to execute a contract in the name of a governmental unit may, on behalf of the unit, enter into an agreement with another governmental unit to perform jointly or for that unit's services, activities or undertakings which any of the contracting units is authorized by law to perform, if the agreement is authorized by the parties thereto, in a city by the city council with the approval of the mayor, in a town by the board of selectmen and in a district by the prudential committee; provided, however, that when the agreement involves the expenditure of funds for establishing supplementary education centers and innovative educational programs, the agreement and its termination shall be authorized by the school committee. Any such agreement shall be for such maximum term, not exceeding twenty-five years, and shall establish such maximum financial liability of the parties, as may be specified in the authorizing votes of the parties thereto. A governmental unit, when duly authorized to do so in accordance with the provisions of law applicable to it, may raise money by any lawful means, including the incurring of debt for purposes for which it may legally incur debt, to meet its obligations under such agreement. Notwithstanding any provisions of law or charter to the contrary, no governmental unit shall be exempt from liability for its obligations under an agreement lawfully entered into in accordance with this section. For the purposes of this section, a "governmental unit" shall mean a city, town or a regional school district, a district as defined in section 1A, a regional planning commission, however constituted, a regional transit authority established under chapter 161B, a water and sewer commission established under chapter 40N or by special law, a county, or a state agency as defined in section 1 of chapter 6A.

All agreements put into effect under this section shall provide sufficient financial safeguards for all participants, including, but not limited to: accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received; the performance of regular audits of such records; and provisions for officers responsible for the agreement to give appropriate performance bonds. The agreement shall also require that periodic financial statements be issued to all participants. Nothing in this section shall prohibit any agreement entered into between governmental units from containing procedures for withdrawal of a governmental unit from said agreement. A decision to enter into an intermunicipal agreement under this section, or to join a regional entity, shall be solely subject to the approval process of the towns' elected bodies.

All bills and payrolls submitted for work done under any such agreement shall be plainly marked to indicate that the work was done under authority thereof. Any reimbursement for or contribution toward the cost of such work shall be made at such intervals as the agreement provides. The amount of reimbursement received under any such agree-

ment by any governmental unit shall be credited on its books to the account of estimated receipts, but any funds received under the provisions of section fifty-three A of chapter forty-four for contribution toward the cost of such work may be expended in accordance with the said provisions. The equipment and employees of a governmental unit while engaged in performing any such service, activity or undertaking under such an agreement shall be deemed to be engaged in the service and employment of such unit, notwithstanding such service, activity or undertaking is being performed in or for another governmental unit or units.

Added by St.1945, c. 438. Amended by St.1966, c. 286; St.1969, c. 85; St.1969, c. 356; St.1969, c. 758, § 5; St.1975, c. 344; St.1982, c. 24; St.1992, c. 133, § 369; St.1995, c. 38, § 57; St.2008, c. 188, §§ 1, 2, eff. July 18, 2008; St.2010, c. 188, § 23, eff. July 27, 2010.

§ 4B. Repealed, 1989, 687, Sec. 8

§ 4B½. Repealed, 1989, 687, Sec. 9

§ 4C. Repealed, 1965, 763, Sec. 1

Historical and Statutory Notes

See, now, c. 150E, § 1 et seq.

§ 4D. Contracts with state or public authority for construction of public works

Any governmental unit, as defined in section four A, may enter into an agreement with the commonwealth or with any public authority, whereby the commonwealth acting through a duly authorized agency, or such public authority, will perform for such governmental unit, any service or activity or undertaking which said governmental unit is authorized by law to perform for itself.

All bills submitted for payments on account of work done under such agreement shall be plainly marked to indicate that the work was done under authority thereof, and payments at such intervals as provided by the agreement shall be made to the commonwealth or the public authority or upon direction of the commonwealth or the public authority, at such intervals as the government provides, directly to the contractor performing the work under agreement.

Any such agreement may provide that such governmental unit pay to the state treasurer or to the treasurer of such public authority, as the case may be, its respective share of the estimated cost of the work to be done, and that the state agency or public authority which is a party to the agreement be authorized to expend the money for the purposes for which the payment is submitted. The provisions of sections twenty-six to twenty-nine, inclusive, and of sections forty-four A to forty-four L, inclusive, of chapter one hundred and forty-nine, and the provisions of sections thirty-nine F to thirty-nine M of chapter thirty, shall apply to all such work performed by a public authority to the same extent and in the same manner as they are applicable to the commonwealth.

Added by St.1967, c. 883, § 1. Amended by St.1978, c. 199.

§ 4E. Education collaboratives

Two or more school committees of cities, towns and regional school districts and boards of trustees of charter schools may enter into a written agreement to conduct education programs and services which shall complement and strengthen the school programs of member school committees and charter schools and increase educational opportunities for children. The school committees and boards of trustees of charter schools shall collaborate to offer the programs and services; provided, however, the association of school committees and board of trustees of charter schools which is formed to deliver the programs and services shall be known as an education collaborative.

The education collaborative shall be managed by a board of directors which shall be comprised of 1 person appointed by each member school committee and 1 person appointed by each member charter board of trustees. All appointed persons shall be either a school committee member or his designee, the superintendent of schools or his designee or a member of the charter board of trustees. Members of the board of directors shall be entitled to a vote according to the terms of the education collaborative agreement. The department of education shall appoint an individual to serve in an advisory capacity to the education collaborative board of directors. The individual shall not be entitled to vote on any matter which comes before the board of directors of the education collaborative.

The written agreement which shall form the basis of the education collaborative shall set forth the purposes of the program or service, the financial terms and conditions of membership of the education collaborative, the method of termination of the education collaborative and of the withdrawal of member school committees and charter schools, the procedure for admitting new members and for

amending the collaborative agreement, the powers and duties of the board of directors of the education collaborative to operate and manage the education collaborative and any other matter not incompatible with law which the member committees and charter schools consider advisable. The agreement shall be subject to the approval of the member school committees and the commissioner of education.

Each board of directors of an education collaborative shall establish and manage a trust fund, to be known as an Education Collaborative Trust Fund, and each such fund shall be designated by an appropriate name. All monies contributed by the member municipalities and charter schools and all grants or gifts from the federal government, state government, charitable foundations, private corporations or any other source shall be paid to the board of directors of the education collaborative and deposited in the fund.

The board of directors of the education collaborative shall appoint a treasurer who may be a treasurer of a city, town or regional school district belonging to the collaborative. The treasurer may, subject to the direction of the board of directors of the education collaborative, receive and disburse all monies of the trust fund without further appropriation. The treasurer shall give bond annually for the faithful performance of his duties as collaborative treasurer in a form approved by the department of revenue and in the sum, not less than the amount established by the department, as shall be fixed by the board of directors of the education collaborative. The board of directors of the education collaborative in its discretion may pay compensation to the treasurer for his services. No member of the board of directors of the education collaborative shall be eligible to serve as treasurer of the collaborative.

The treasurer of the education collaborative board of directors shall have the authority to make appropriate investments of the monies of the Education Collaborative Trust Fund consistent with section 54 of chapter 44.

The board of directors of an educational collaborative may borrow money, enter into long-term or short-term loan agreements or mortgages and apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purpose for which such collaborative is established; provided, however, that the board of directors has determined that any borrowing, loan or mortgage is cost-effective and in the best interest of the collaborative and its member municipalities and charter schools. The borrowing, loans or mortgages shall be consistent with the written agreement and articles of incorporation, if any, of the educational collaborative and shall be consistent with standard lending practices.

The board of directors of the education collaborative may employ an executive officer who shall serve under the general direction of the board and who shall be responsible for the care and supervision of the education collaborative.

The board of directors of the education collaborative shall be considered to be a public employer and have the authority to employ personnel, including teachers, to carry out the purposes and functions of the education collaborative. No person shall be eligible for employment by the board of directors as an instructor of children with severe special needs, teacher of children with special needs, teacher, guidance counselor or school psychologist unless the person has been granted a certificate by the board of education under section 38G of chapter 71 or section 6 of chapter 71A or an approval under the regulations promulgated by the board of education under chapter 71B or chapter 74 with respect to the type of position for which he seeks employment; provided, however, that nothing herein shall be construed to prevent a board of directors of an education collaborative from prescribing additional qualifications. A board of directors of an education collaborative may, upon its request, be exempted by the board of education for any 1 school year from the requirements of this section to employ certified or approved personnel when compliance therewith would in the opinion of the board constitute a great hardship.

The education collaborative shall be considered to be a public entity and shall have standing to sue and be sued to the same extent as a city, town or regional school district. An education collaborative, acting through its board of directors, may enter into contracts for the purchase of supplies, materials and services and for the purchase or leasing of land, buildings and equipment as considered necessary by the board of directors.

A school committee of a city, town or regional school district or board of trustees of a charter school may authorize the prepayment of monies for an educational program or service of the education collaborative to the treasurer of an education collaborative, and the city, town or regional school

district or charter school treasurer shall be required to approve and pay the monies in accordance with the authorization of the school committee or board of trustees.

Added by St.1970, c. 889. Amended by St.1972, c. 753; St.1974, c. 797; St.1975, c. 323, §§ 1, 2; St.1978, c. 481, §§ 1 to 4; St.1981, c. 132, § 1; St.1985, c. 631, § 1; St.1995, c. 98; St.2000, c. 384, § 8; St.2010, c. 12, § 2, eff. Jan. 19, 2010.

§ 4F. Purchase of clothing or apparel; restrictions

In any city or town which accepts the provisions of this section, any contracts or orders for items of clothing or apparel shall be given to such establishments only as submit to the city or town the name and address of the manufacturer of such items, and the names and addresses of any and all contractors for such items, and only to such establishments as pay the prevailing rate of wages, determined by the commissioner of labor and industries. Said prevailing rates shall be based on wage rates and working hours that have been established by collective bargaining agreement or understanding between organized labor and employers in the apparel industry. Said commissioner shall, upon application from a city or town, prepare and furnish for the use of such city or town a list of the several classifications of labor usually performed by the employees in the apparel trades, together with the prevailing rate of wages and working hours.

A written declaration by the bidder on said contracts or orders for items of clothing or apparel, upon submission of his bid, that each garment to be purchased shall have a union label affixed to such garment shall be sufficient evidence that said manufacturer or contractor pays the prevailing rate of wages based on wage rates and working hours established by collective bargaining or understanding between organized labor and the employer. Every contractor, subcontractor or other employer, engaged in any work to which this section applies, shall keep a true and accurate record of employees, showing the name, address and occupational classification of each employee, and the hours worked by, and the wages paid to, each such employee, and shall furnish to the city or town upon request a true statement of the contents of such record.

Added by St.1973, c. 84.

§ 4G. Repealed, 1989, 687, Sec. 10

§ 4H. Repealed, 1989, 687, Sec. 11

§ 4*I*. Growth and development policy committees; definitions

As used in this section, the following words shall have the following meanings:—

"Balanced growth and development issues", the current and future residential, commercial and industrial development demands of municipalities; identification of needed or desirable longterm housing and economic development objectives and priorities; protection of environmentally sensitive areas; preservation of important land and water resources; growth management land use problems, including regional transportation systems, housing, water quality, open space, recreational land and agricultural land; municipal growth management decisions; the impact of a proposed development on infrastructure, highway safety, traffic congestion, transportation systems and ability to provide municipal services; development which promotes the conservation and efficient use of natural resources, including energy, safe alternative energy resources, water, wetland, flood plains, ground water aquifers and aquifer recharge areas; and any or all of the foregoing which by its nature or location would have a significant impact upon the health, safety or welfare of citizens of more than one municipality or with respect to which more than one municipality would be significantly affected by a proposed development.

"Federal agency", any office, agency division, department, board or commission of the United States government.

"Growth and development policy committee", the committee established pursuant to this section.

"Member municipality", any city or town which establishes or becomes a member of a growth and development policy committee.

"State agency", any executive office, agency, department, board or commission of the commonwealth.

Upon a majority vote of the board of selectmen in a town or the city council and mayor in a city, any two or more municipalities may establish a growth and development policy committee for the purposes and with the powers set forth in this section. Such growth and development policy committee shall be composed of an equal number

of representatives from each member municipality, but in no event shall there be less than three members representing each member municipality. Any municipality wishing to become a member of a growth and development policy committee subsequent to the initial formation thereof may do so upon a majority vote of the then existing representatives of the growth and development policy committee. Representatives of each member municipality shall be appointed by majority of the respective member municipality's board of selectmen, in the case of a town, or city council, with approval of the mayor, in the case of a city.

Staff and planning assistance may be provided to the growth and development policy committee by any board, department or agency of a member municipality. Each member municipality may appropriate funds to the growth and development policy committee for any purpose related to committee matters. The growth and development committee may accept contributions, gifts or grants from any private source or public source, including, but not limited to, any local agency, state agency or federal agency.

Each growth and development policy committee shall have the following powers: to engage in all acts and conduct for the purpose of intergovernmental planning of balanced growth and development issues; to provide mutual planning, comment and review of any balanced growth and development issue which has a significant impact upon the health, safety or welfare of citizens of more than one member municipality; to research, develop, sponsor, fund and implement programs and projects designed to address balanced growth and development issues.

Added by St.1987, c. 400.

§ 4J. Public safety mutual aid agreement; procedure for joining agreement; requests to receive assistance; rights and responsibilities of requesting and sending parties

(a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Agency", the Massachusetts emergency management agency.

"Agreement", the statewide public safety mutual aid agreement established in subsection (b).

"Authorized representative", in the case of a city or town, the mayor, city manager, town manager, town administrator, executive secretary, police chief or on-duty shift commander of the police department, fire chief or on-duty shift commander of the fire department, health director or chairperson of the board of health and the emergency management director and, in the case of a governmental unit that is not a city or town, the chief executive officer or his designee.

"Employee", a person employed full-time or part-time by a governmental unit, a volunteer officially operating under a governmental unit, or a person contractually providing services to a governmental unit.

"Governmental unit", a city, town, county, regional transit authority established under chapter 161B, water or sewer commission or district established under chapter 40N or by special law, fire district, regional health district established under chapter 111, a regional school district or a law enforcement council.

"Incident command system", the standardized national incident management system that establishes an on-scene management system of procedures for controlling personnel, facilities, equipment and communications from different agencies at the scene of an emergency or other event for which mutual aid assistance is provided.

"Law enforcement council", a nonprofit corporation comprised of municipal police chiefs and other law enforcement agencies established to provide: (i) mutual aid to its members pursuant to mutual aid agreements; (ii) mutual aid or requisitions for aid to non-members consistent with section 8G of this chapter or section 99 of chapter 41; and (iii) enhanced public safety by otherwise sharing resources and personnel.

"Mutual aid assistance", the cross-jurisdictional provision of emergency services, materials or facilities from 1 party to another when existing resources are, or may be, inadequate.

"Party", a governmental unit that has joined the agreement.

"Public safety incident", an event, emergency or natural or man-made disaster, that threatens or causes harm to public health, safety or welfare and that exceeds, or reasonably may be expected to exceed, the response or recovery capabilities of a governmental unit including, but not limited to, a technological hazard, planned event, civil unrest,

health-related event and an emergency, act of terrorism and training and exercise that tests and simulates the ability to manage, respond to or recover from any such event.

"Requesting party", a party that requests aid or assistance from another party pursuant to the agreement.

"Sending party", a party that renders aid or assistance to another party under the agreement.

(b) There shall be a statewide public safety mutual aid agreement to create a framework for the provision of mutual aid assistance among the parties to the agreement in the case of a public safety incident. The assistance to be provided under the agreement shall include, but not be limited to, fire service, law enforcement, emergency medical services, transportation, communications, public works, engineering, building inspection, planning and information assistance, resource support, public health, health and medical services, search and rescue assistance and any other resource, equipment or personnel that a party to the agreement may request or provide in anticipation of, or in response to, a public safety incident.

(c)(1) If a city or town wishes to join the agreement, the mayor in the case of a city, the city manager in the case of a Plan D or Plan E city, or the town manager, town administrator or chairman of the board of selectmen with the approval of the board of selectmen, may act on behalf of the city or town to join the agreement by notifying the director of the agency in writing. The municipality shall be a party to the agreement 30 days after receipt by the agency of the written notification.

A city or town that has joined the agreement may opt out of the agreement in the same manner as provided for joining the agreement and by notifying the agency in writing of its intention to opt out. The removal of the municipality from the agreement shall take effect 10 days after receipt by the agency of the written notification.

(2) If a governmental unit that is not a city or town wishes to join the agreement, the chief executive officer of the governmental unit may act on its behalf to join the agreement by notifying the director of the agency in writing. The governmental unit shall be a party to the agreement 30 days after receipt by the agency of the written notification.

If a governmental unit that is not a city or town has joined the agreement but wishes to opt out of the agreement, the chief executive officer of the governmental unit may act on its behalf to opt out of the agreement by notifying the agency in writing. The removal of the municipality from the agreement shall take effect 10 days after receipt by the agency of the written notification.

(d)(1) A request by a party to receive mutual aid assistance under the agreement shall be made, either orally or in writing, by an authorized representative of the requesting party and shall be communicated to an authorized representative of the sending party or to the agency; provided, however, that if the request is communicated orally, the requesting party shall reduce the request to writing and deliver it to the sending party or to the agency at the earliest possible date, but not later than 72 hours after making the oral request. A party to the agreement may request mutual aid assistance during, in anticipation of or as a result of a public safety incident.

(2) An oral or written request for mutual aid assistance under the agreement shall include the following information:

(i) a description of the public safety incident;

(ii) the nature, type and amount of personnel, equipment, materials, supplies or other resources being requested;

(iii) the manner in which the resources shall be used and deployed;

(iv) a reasonable estimate of the length of time for which the resources shall be needed;

(v) the location to which the resources shall be deployed; and

(vi) the requesting party's point of contact.

(3) A party that receives a request for mutual aid assistance shall provide and make available, to the extent reasonable and practicable under the circumstances, the resources requested; provided, however, that a sending party may withhold requested resources to the extent necessary to provide reasonable protection and coverage for its own jurisdiction.

(e) The requesting party shall be responsible for the overall operation, assignment and deployment of resources and personnel provided by a sending party consistent with the incident command system. The sending party shall retain direct supervision, command and control of personnel, equipment and resources provided by the sending party unless otherwise agreed to by the requesting party and the sending party. During the course of ren-

dering mutual aid assistance under the agreement, the sending party shall be responsible for the operation of its equipment and for any damage thereto unless the sending party and the requesting party agree otherwise.

(f)(1) All expenses incurred by the sending party in rendering mutual aid assistance pursuant to the agreement shall be paid by the sending party; provided, however, that a requesting party and a sending party may enter into supplementary agreements for reimbursement of costs associated with providing mutual aid assistance incurred by a sending party.

(2) A sending party shall document its costs of providing mutual aid assistance under the agreement, including direct and indirect payroll and employee benefit costs, travel costs, repair costs and the costs of materials and supplies. A sending party shall also document the use of its equipment and the quantities of materials and supplies used while providing mutual aid assistance under the agreement.

(3) Except as otherwise agreed to by the parties, the requesting party shall seek reimbursement under any applicable federal and state disaster assistance programs for the costs of responding to the public safety incident. The requesting party and each sending party shall receive, based on the documented costs of providing mutual aid assistance, its pro rata share of the disaster assistance reimbursement provided to the requesting party.

(g) While providing mutual aid assistance under the agreement, employees of a sending party shall: (i) be afforded the same powers, duties, rights and privileges as they are afforded in the sending party's geographical jurisdiction or location; and (ii) receive the same salary, including overtime, that they would be entitled to receive if they were operating in their own governmental unit. In the absence of an agreement to the contrary, the sending party shall be responsible for all such salary expenses, including overtime.

(h)(1) While in transit to, returning from and providing mutual aid assistance under the agreement, employees of a sending party shall have the same rights of defense, immunity and indemnification that they otherwise would have under the law if they were acting within the scope of their employment under the direction of their employer. A sending party shall provide to, and maintain for, each of its employees who provide mutual aid assistance under the agreement the same indemnification, defense, right to immunity, employee benefits, death benefits, workers' compensation or similar protection and insurance coverage that would be provided to those employees if they were performing similar services in the sending party's jurisdiction.

(2) Each party to the agreement shall waive all claims and causes of action against each other party to the agreement that may arise out of their activities while rendering or receiving mutual aid assistance under the agreement, including travel outside of its jurisdiction.

(3) Each requesting party shall defend, indemnify and hold harmless each sending party from all claims by third parties for property damage or personal injury which may arise out of the activities of the sending party or its employees, including travel, while providing mutual aid assistance under the agreement.

(i) This section shall not affect, supersede or invalidate any other statutory or contractual mutual aid or assistance agreements involving parties to the agreement including, but not limited to, those established pursuant to section 4A or 8G. A party may enter into supplementary mutual aid agreements with other parties or jurisdictions.

Added by St.2010, c. 188, § 24, eff. July 27, 2010.

§ 4K. Public works municipal mutual aid agreement; procedure for joining agreement; advisory committee; requests to receive assistance; rights and responsibilities of requesting and sending parties

(a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

"Advisory committee", the statewide public works municipal mutual aid advisory committee established in subsection (d).

"Agreement", the statewide public works municipal mutual aid agreement established in subsection (b).

"Employee", a person employed full-time or part-time by a governmental unit, a volunteer officially operating under a governmental unit, or a person contractually providing services to a governmental unit.

"Governmental unit", a city, town, county or district, however constituted, or water or sewer

commission established under the provisions of chapter 40N or any other general or special law.

"Mutual aid assistance", cross-jurisdictional provision of services, materials or facilities from 1 party to another when existing resources are, or may be, inadequate.

"Party", a governmental unit that has joined the agreement.

"Public works incident", a foreseeable or unforeseeable event, emergency or natural or manmade disaster that affects or threatens to affect the public works operations of a governmental unit.

"Requesting party", a party that requests aid or assistance from another party pursuant to the agreement.

"Sending party", a party that renders aid or assistance to another party under the agreement.

(b) There shall be a statewide public works municipal mutual aid agreement to facilitate the provision of public works resources across jurisdictional lines in the case of a public works incident that requires mutual aid assistance from 1 or more municipalities. The mutual aid assistance to be provided under the agreement shall include, but not be limited to, services related to public works, personnel, equipment, supplies and facilities to prepare for, prevent, mitigate, respond to and recover from public works incidents.

(c)(1) If a city or town wishes to join the agreement, the mayor in the case of a city, the city manager in the case of a Plan D or Plan E city, or the town manager, town administrator or chair of the board of selectmen upon approval by a majority vote of the board of selectmen, may act on behalf of the city or town to join the agreement by notifying the advisory committee in writing. The municipality shall be a party to the agreement 30 days after receipt by the advisory committee of the written notification.

If a city or town has joined the agreement but wishes to opt out of the agreement, the mayor in the case of a city, the city manager in the case of a Plan D or Plan E city, or the town manager, town administrator or chair of the board of selectmen upon approval by a majority vote of the board of selectmen in the case of a town, may act on behalf of the city or town to opt out of the agreement by notifying the advisory committee in writing. The removal of the municipality from the agreement shall take effect 10 days after receipt by the advisory committee of the written notification.

(2) If a governmental unit that is not a city or town wishes to join the agreement, the chief executive officer of the governmental unit may act on its behalf to join the agreement by notifying the advisory committee in writing. The governmental unit shall be a party to the agreement 30 days after receipt by the advisory committee of the written notification.

If a governmental unit that is not a city or town has joined the agreement but wishes to opt out of the agreement, the chief executive officer of the governmental unit may act on its behalf to opt out of the agreement by notifying the advisory committee in writing. The removal of the governmental unit that is not a city or town from the agreement shall take effect 10 days after receipt by the advisory committee of the written notification.

(3) If a governmental unit in a state contiguous to the commonwealth wishes to join the agreement, the governmental unit may join the agreement by notifying the advisory committee in writing. The governmental unit shall be a party to the agreement 30 days after receipt by the advisory committee of the written notification.

If a governmental unit in a state contiguous to the commonwealth has joined the agreement but wishes to opt out of the agreement, the governmental unit may opt out of the agreement by notifying the advisory committee in writing. The removal of the governmental unit from the agreement shall take effect 10 days after receipt by the advisory committee of the written notification.

(d) There shall be a statewide public works municipal mutual aid advisory committee to consist of the secretary of public safety and security or his designee, who shall serve as chair of the committee; and 1 member appointed by the secretary of public safety and security from each of the following: the Massachusetts Highway Association; the New England Chapter of the American Public Works Association, who shall be a resident of the commonwealth; the New England Water Environment Association, who shall be a resident of the commonwealth; the Massachusetts Tree Wardens' and Foresters' Association; the Massachusetts Water Works Association; and the Massachusetts Municipal Association.

The advisory committee shall develop procedural plans, protocols and programs for intrastate and interstate cooperation to be used by public works agencies in response to a public works incident. The advisory committee shall be responsible for the

administration and coordination of the statewide mutual aid agreement. The advisory committee shall develop and make available to parties forms to facilitate requests for aid, including a form to track the movement of public works equipment and personnel.

(e) Each party shall identify not more than 3 points of contact to serve as the primary liaison for all issues relating to the agreement.

(f)(1) A request by a party to receive mutual aid assistance shall be made, either orally or in writing, by the chief executive officer of the requesting party or by 1 of its designated points of contact and shall be communicated to the chief executive officer or 1 its designated points of contact from the sending party; provided, however, that if the request is communicated orally, the requesting party shall reduce the request to writing and deliver it to the sending party at the earliest possible date, but not later than 72 hours after making the oral request. (2) A requesting party may request the assistance of 1 or more parties to assist with or manage a public works incident, including recovery-related exercises, testing or training.

(2) An oral or written request for mutual aid assistance under the agreement shall include the following information:

(i) a description of the public works incident response and recovery functions for which assistance is needed;

(ii) the nature, type and amount of public works services, personnel, equipment, materials, supplies or other resources being requested;

(iii) the manner in which the resources shall be used and deployed;

(iv) a reasonable estimate of the length of time for which the resources shall be needed;

(v) the location to which the resources shall be deployed; and

(vi) the requesting party's point of contact.

(3) A party that receives a request for mutual aid assistance shall provide and make available, to the extent reasonable and practicable under the circumstances, the resources requested by the requesting party; provided, however, that a sending party may withhold requested resources to the extent necessary to provide reasonable protection and coverage for its own jurisdiction.

(g) The requesting party shall be responsible for the overall operation, assignment and deployment of resources, equipment and personnel provided by a sending party. The sending party shall retain direct supervision, command and control of personnel, equipment and resources provided by the sending party unless otherwise agreed to by the requesting party and the sending party. During the course of rendering mutual aid assistance under the agreement, the sending party shall be responsible for the operation of its equipment and for any damage thereto unless the sending party and the requesting party agree otherwise.

(h)(1) All expenses incurred by the sending party in rendering mutual aid assistance pursuant to the agreement shall be paid by the sending party; provided, however, that a requesting party and a sending party may enter into supplementary agreements for reimbursement of costs associated with providing mutual aid assistance incurred by a sending party.

(2) A sending party shall document its costs of providing mutual aid assistance under the agreement, including direct and indirect payroll and employee benefit costs, travel costs, repair costs and the costs of materials and supplies. A sending party shall also document the use of its equipment and the quantities of materials and supplies used while providing mutual aid assistance under the agreement.

(3) Except as otherwise agreed to by the parties, the requesting party shall seek reimbursement under any applicable federal and state disaster assistance programs for the costs of responding to the public works incident. The requesting party and each sending party shall receive, based on the documented costs of providing mutual aid assistance, its pro rata share of the disaster assistance reimbursement provided to the requesting party.

(4) While providing mutual aid assistance under the agreement, employees of a sending party shall: (i) be afforded the same powers, duties, rights and privileges as they are afforded in the sending party's geographical jurisdiction or location; (ii) be considered similarly licensed, certified or permitted in the requesting party's jurisdiction if the employee holds a valid license, certificate or permit issued by the employee's governmental unit; and (iii) receive the same salary, including overtime, that they would be entitled to receive if they were operating in their own governmental unit. In the absence of an agreement to the contrary, the send-

ing party shall be responsible for all such salary expenses, including overtime.

[There is no subsection (i).]

(j)(1) While in transit to, returning from and providing mutual aid assistance under the agreement, employees of a sending party shall have the same rights of defense, immunity and indemnification that they otherwise would have under the law if they were acting within the scope of their employment under the direction of their employer. A sending party shall provide to, and maintain for, each of its employees who provide mutual aid assistance under the agreement the same indemnification, defense, right to immunity, employee benefits, death benefits, workers' compensation or similar protection and insurance coverage that would be provided to those employees if they were performing similar services in the sending party's jurisdiction.

(2) Each party to the agreement shall waive all claims and causes of action against all other parties that may arise out of their activities while rendering or receiving mutual aid assistance under the agreement, including travel outside of its jurisdiction.

(3) Each requesting party shall defend, indemnify and hold harmless each sending party from all claims by third parties for property damage or personal injury which may arise out of the activities of the sending party or its employees, including travel, while providing mutual aid assistance under the agreement.

(4) All equipment requested and deployed pursuant to the statewide municipal mutual assistance agreement shall be insured by the sending party.

(k) This section shall not affect, supersede or invalidate any other statutory or contractual mutual aid or assistance agreements involving parties to the agreement including, but not limited to, those established pursuant to section 4A. A party may enter into supplementary mutual aid agreements with other parties or jurisdictions.

Added by St.2010, c. 188, § 24, eff. July 27, 2010.

§ 5. Appropriation of money for exercise of corporate powers

A town may at any town meeting appropriate money for the exercise of any of its corporate powers; provided, however, that a town shall not appropriate or expend money for any purpose, on any terms, or under any conditions inconsistent with any applicable provision of any general or special law.

Amended by St.1932, c. 114, § 3; St.1933, c. 153, § 2; St.1933, c. 245, § 2; St.1933, c. 318, § 3; St.1934, c. 154, § 1; St.1935, c. 28; St.1935, c. 106; St.1935, c. 179; St.1936, c. 132, § 1; St.1936, c. 163; St.1936, c. 211, § 5; St.1936, c. 390; St.1937, c. 185; St.1938, c. 142, § 1; St.1938, c. 172, § 1; St.1939, c. 19; St.1941, c. 217, § 2; St.1941, c. 599, § 4; St.1943, c. 99; St.1945, c. 391, § 2; St.1946, c. 358, §§ 2 to 9; St.1946, c. 409, § 2; St.1946, c. 526; St.1947, c. 144; St.1947, c. 340, § 5; St.1947, c. 468, § 2; St.1947, c. 525; St.1948, c. 89; St.1948, c. 174; St.1948, c. 445, § 1; St.1948, c. 660, § 24; St.1949, c. 118, § 2; St.1949, c. 163; St.1949, c. 761, § 11; St.1950, c. 27, § 2; St.1950, c. 101; St.1950, c. 141; St.1950, c. 157; St.1950, c. 354, § 2; St.1950, c. 478; St.1950, c. 492, § 2; St.1951, c. 113; St.1951, c. 149; St.1951, c. 718; St.1952, c. 118; St.1952, c. 239; St.1952, c. 247, § 1; St.1953, c. 149; St.1953, c. 209; St.1953, c. 535, § 1; St.1953, c. 576, § 2; St.1953, c. 674, § 9; St.1954, c. 149; St.1954, c. 297, § 2; St.1954, c. 627, § 16; St.1955, c. 85, § 1; St.1955, c. 271, § 1; St.1955, c. 291; St.1955, c. 385; St.1955, c. 716, § 1; St.1955, c. 760, § 2; St.1956, c. 152; St.1956, c. 211; St.1956, c. 495, § 2; St.1956, c. 596, § 1; St.1957, c. 223, § 2; St.1957, c. 361; St.1957, c. 406, § 2; St.1958, c. 118, §§ 1, 2; St.1958, c. 124; St.1958, c. 176; St.1958, c. 390; St.1959, c. 57; St.1959, c. 59, § 2; St.1959, c. 73, § 1; St.1959, c. 208; St.1959, c. 376; St.1960, c. 3; St.1960, c. 91; St.1960, c. 236; St.1960, c. 626, § 3; St.1961, c. 20; St.1961, c. 357; St.1961, c. 498, § 2; St.1962, c. 580, § 2; St.1962, c. 672, § 1; St.1963, c. 60; St.1963, c. 479, § 2; St.1963, c. 697, § 3; St.1964, c. 173; St.1964, c. 234; St.1964, c. 248; St.1964, c. 581, § 2; St.1964, c. 643, § 2; St.1965, c. 66; St.1965, c. 117; St.1965, c. 179; St.1965, c. 201; St.1965, c. 327; St.1966, c. 79; St.1966, c. 108; St.1966, c. 184; St.1966, c. 247; St.1967, c. 80; St.1967, c. 90; St.1967, c. 101; St.1967, c. 132, § 1; St.1967, c. 160, § 1; St.1967, c. 638; St.1969, c. 256; St.1969, c. 330; St.1969, c. 391, § 2; St.1969, c. 506; St.1969, c. 722, § 1; St.1969, c. 849, §§ 25, 26, 27, 28; St.1970, c. 82; St.1970, c. 382, § 3; St.1971, c. 784, § 1; St.1972, c. 220, § 1; St.1972, c. 236; St.1972, c. 553; St.1973, c. 480; St.1973, c. 1155, § 6; St.1973, c. 1210, § 17; St.1974, c. 349, § 1; St.1974, c. 547; St.1975, c. 458; St.1975, c. 518, § 1; St.1975, c. 574; St.1975, c. 706, § 87; St.1976, c. 416, § 1; St.1976, c. 485; St.1977, c. 425; St.1977, c. 232, § 1; St.1978, c. 77; St.1978, c. 512, § 8; St.1978, c. 514, § 16; St.1978, c. 581, § 1; St.1979, c. 211; St.1980, c. 20; St.1981, c. 302; St.1981, c. 351, § 120; St.1983, c. 56; St.1984, c. 43; St.1985, c. 231, § 19B; St.1986, c. 136; St.1986, c. 197; St.1987, c. 158; St.1989, c. 113; St.1989, c. 687, § 12.

Historical and Statutory Notes

St.1692–3, c. 28, § 6.
St.1785, c. 75, § 7.
St.1786, c. 67, § 2.
St.1793, c. 59, § 1.
St.1817, c. 144.
St.1818, c. 121.
St.1826, c. 143, § 4.
R.S.1836, c. 15, §§ 12, 16.
R.S.1836, c. 23, § 9.
R.S.1836, c. 24, §§ 70, 78.

R.S.1836, c. 25, §§ 8, 9.
R.S.1836, c. 46, § 1.
R.S.1836, c. 54, § 3.
St.1838, c. 38.
St.1851, c. 305, § 2.
St.1854, c. 429.
St.1859, c. 25.
G.S.1860, c. 18, § 10.
G.S.1860, c. 33, § 9.
St.1864, c. 100.
St.1866, c. 222.
St.1869, c. 132.
St.1869, c. 206.
St.1869, c. 381.
St.1869, c. 457, § 1.
St.1870, c. 118.
St.1870, c. 169.
St.1872, c. 84.
St.1872, c. 217, § 4.
St.1872, c. 324, § 2.
St.1873, c. 192.
St.1873, c. 306.
St.1874, c. 112.
St.1880, c. 111, § 1.
St.1881, c. 88.
P.S.1882, c. 27, §§ 10, 11, 12, 44, 50.
P.S.1882, c. 40, § 10.
P.S.1882, c. 84, § 20.
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St.1889, c. 21.
St.1889, c. 380.
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St.1896, c. 152.
St.1896, c. 291.
St.1896, c. 455.
St.1896, c. 477.
St.1897, c. 132.
St.1898, c. 45.
St.1898, c. 496, § 3.
St.1899, c. 171.
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R.L.1902, c. 25, §§ 15, 16, 18, 51.
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St.1902, c. 109.
St.1902, c. 286.
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St.1907, c. 186, § 1.
St.1907, c. 191, § 6.
St.1907, c. 311.
St.1908, c. 91.
St.1908, c. 392, § 1.
St.1910, c. 90.
St.1911, c. 72.
St.1913, c. 62, § 1.
St.1914, c. 122.
St.1915, c. 143.
St.1915, c. 145, §§ 7, 13.
St.1915, c. 164.
St.1916, c. 23.
St.1916, c. 190, § 6.
St.1918, c. 291, § 2.
St.1919, c. 61, § 1.
St.1919, c. 120.
St.1919, c. 350, § 117.
St.1920, c. 218.
St.1920, c. 292, § 1.
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St.1921, c. 486, § 6.
St.1923, c. 202.
St.1923, c. 401.
St.1924, c. 248, § 1.
St.1924, c. 404, § 8.
St.1924, c. 504, § 4.
St.1925, c. 17, § 1.
St.1926, c. 116.
St.1927, c. 16.
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St.1928, c. 36.
St.1928, c. 350, § 1.
St.1929, c. 9.
St.1929, c. 108.
St.1929, c. 288, § 6.
St.1930, c. 46.
St.1930, c. 96.
St.1930, c. 277.
St.1931, c. 41, § 2.
St.1931, c. 63, § 2.
St.1931, c. 348.
St.1931, c. 426, § 154.
St.1931, c. 458, § 3.

§ 5A. Cities; reserve funds for extraordinary expenditures; establishment

To provide for extraordinary or unforeseen expenditures, a city may, prior to the date when the tax rate for a fiscal year is fixed, include in the appropriations for such fiscal year as a reserve fund a sum not exceeding three per cent of the tax levy for the fiscal year next preceding such fiscal year. No direct drafts against this fund shall be made, but transfers from the fund may from time to time be voted by the city council upon recommendation of the mayor, and the city auditor or officer having similar duties shall make such transfers as are so voted.

Added by St.1936, c. 40. Amended by St.1937, c. 34; St.1949, c. 135; St.1969, c. 849, § 28A; St.1971, c. 766, § 5.

§ 5B. Stabilization funds; establishment

For the purpose of creating 1 or more stabilization funds, cities, towns and districts may appropriate in any year an amount not exceeding, in the aggregate, 10 per cent of the amount raised in the preceding fiscal year by taxation of real estate and tangible personal property or such larger amount as may be approved by the director of accounts. The aggregate amount in such funds at any time shall not exceed 10 per cent of the equalized valuation of the city or town as defined in section 1 of chapter 44. Any interest shall be added to and become part of the fund.

The treasurer shall be the custodian of all such funds and may deposit the proceeds in national banks or invest the proceeds by deposit in savings banks, co-operative banks or trust companies organized under the laws of the commonwealth, or invest the same in such securities as are legal for the investment of funds of savings banks under the laws of the commonwealth or in federal savings and loans associations situated in the commonwealth.

At the time of creating any such fund the city, town or district shall specify, and at any later time may alter, the purpose of the fund, which may be for any lawful purpose, including without limitation an approved school project under chapter 70B or any other purpose for which the city, town or district may lawfully borrow money. Such specification and any such alteration of purpose, and any appropriation of funds into or out of any such fund, shall be approved by two-thirds vote, except as provided in paragraph (g) of section 21C of chapter 59 for a majority referendum vote. Subject to said section 21C, in a town or district any such vote shall be taken at an annual or special town meeting, and in a city any such vote shall be taken by city council.

Added by St.1945, c. 124. Amended by St.1957, c. 215; St.1957, c. 404, §§ 1, 2; St.1962, c. 463; St.1966, c. 62; St.1969, c. 849, § 29; St.1971, c. 766, § 6; St.1985, c. 94; St.1991, c. 138, § 333; St.1998, c. 463, § 42; St.2003, c. 46, § 14, eff. July 31, 2003; St.2003, c. 140, § 19, eff. July 31, 2003.

§ 5C. Districts; reserve funds for extraordinary expenditures; establishment

To provide for extraordinary or unforeseen expenditures, a district may at an annual or special district meeting appropriate or transfer a sum or sums not exceeding, in the aggregate, five per cent of the receipts from taxes, rates and services of the fiscal year preceding the fiscal year for which the fund, to be known as the reserve fund, is established. No direct drafts against this fund shall be made, but transfers from the fund may from time to time be voted by the prudential committee, if any, otherwise the commissioners; and the district treasurer shall make such transfers accordingly.

Added by St.1967, c. 44, § 3. Amended by St.1969, c. 849, § 29A; St.1971, c. 766, § 7; St.1986, c. 651, § 1.

§ 5D. Contributory retirement system funds; recovery of pension costs

In order to offset the anticipated costs for funding the contributory retirement systems, cities, towns, counties and districts may appropriate in any year an amount not exceeding five per cent of the amount raised in the preceding year by taxation of real estate and tangible personal property. Such amounts shall be credited to the Pension Reserve Fund provided for in section twenty-two of chapter thirty-two. The aggregate amount in such fund at any time shall not exceed ten per cent of the equalized valuation of the city or town as defined in section one of chapter forty-four. Any interest shall be added to and become part of such fund. In any city, town or district which belongs to a city, town or district retirement system, all amounts appropriated pursuant to this section shall be transferred to and credited to the Pension Reserve Fund provided for in section twenty-two of chapter thirty-two. In any city, town or district which belongs to a county retirement system, all amounts appropriated pursuant to this section shall be held by the city, town or district treasurer pursuant to subdivision (9) of section twenty-two of chapter thirty-two.

All sums in such fund shall be appropriated and used only for the purpose of offsetting the anticipated future cost of funding the contributory retirement system of such city, town or district.

The treasurer of the city, town or district shall be the custodian of such fund and may deposit the proceeds in national banks or invest the proceeds by deposit in savings banks, cooperative banks or trust companies organized under the laws of the commonwealth, or invest the same in such securities as are legal for the investment of funds of savings banks under the laws of the commonwealth or in federal savings and loan associations situated in the commonwealth or may participate in the PRIT Fund in accordance with clause (8) of section twenty-two of chapter thirty-two.

Such fund may be appropriated for such purposes in a town at an annual town meeting by a majority vote, in a district at an annual district meeting by a majority vote, and in a city by a majority vote of the city council.

The commissioner of revenue shall establish rules, regulations and procedures requiring counties, cities, towns, and districts to recover employee pension costs from federal grant monies. Each spending agency of said counties, cities, towns and districts shall, at such time and in the manner as said commissioner shall prescribe, authorize and direct the treasurer to initiate such procedures as said commissioner shall establish to transfer to the

pension reserve fund for the system of which such federally funded employee is a member, an amount equal to the employer's normal cost of retirement benefits, as determined by the actuary pursuant to chapter thirty-two, which are incurred as a result of said federal grant. Expenditures for the payment of salaries to be made from any federal grant shall not be made until the full amount of such pension costs are recovered in accordance with such procedures as said commissioner shall establish. The commissioner of administration shall develop a schedule phasing in the full assessment of such normal costs, provided that full normal costs shall be assessed against all federal grant payrolls not later than October first, nineteen hundred and eighty-eight. If any federal granting authority refuses to allow the pension cost recovery provided for in this paragraph, the amount of any such recovery so refused, upon final adjudication of said refusal, shall be transferred from the pension reserve fund back to the spending agency.
Added by St.1977, c. 559. Amended by St.1983, c. 661, § 24; St.1985, c. 741, § 2; St.1987, c. 697, § 115.

§ 5E. Unemployment compensation fund; deposit and investment; payments

To provide for the anticipated costs of funding reimbursements to the commonwealth for unemployment compensation benefits under the provisions of chapter one hundred and fifty-one A, any city, town or district may appropriate in any year an amount not exceeding one-tenth of one per cent of such city's or town's equalized valuation as defined in section one of chapter forty-four, to establish and maintain a special fund to be known as the unemployment compensation fund; provided, however, that no such appropriation may be made at any time when the aggregate amount in such fund equals or exceeds one per cent of such equalized valuation. Any interest shall be added to and become a part of such special fund.

The treasurer of the city, town or district shall be the custodian and administrator of such special fund, and may deposit or invest the fund in such manner as may be legal for other city, town or district funds under the laws of the commonwealth including, without limitation, the Massachusetts Municipal Depository Trust.

The treasurer shall pay from such special fund, including the income thereof, such amounts as the selectmen or other officers authorized to expend money determine to be necessary from time to time to satisfy the liability of the city, town or district, or any instrumentality thereof, in accordance with the unemployment security law of the commonwealth.
Added by St.1978, c. 412.

§ 5F. Ambulance services; recreational facilities; service charges; credit card payments

For the following purposes, a city or town may defray the cost, including maturing debt and interest, of acquiring, establishing, maintaining, and operating certain facilities and services by charges established by the city or town upon persons making use of such facilities or services: (1) purchasing, hiring, maintaining, and operating ambulances; and (2) establishing, maintaining, and equipping public gymnasiums, swimming pools, bathing beaches, golf courses, artificial ice-skating rinks and other such means of recreation, instruction or exercise.

Notwithstanding the provisions of any general or special law to the contrary, a city or town may accept credit cards for payment for golf greens fees for the use of a golf course; provided, however, that any person who pays by credit card shall not be charged an amount greater than the amount charged to other persons.
Added by St.1989, c. 687, § 13. Amended by St.1993, c. 142.

§ 5G. Municipal waterways improvement and maintenance funds

A city or town may establish a municipal waterways improvement and maintenance fund to receive revenue under subsection (i) of section 2 of chapter 60B and under section 10A of chapter 91 and sums received from the commonwealth or the federal government, and may appropriate monies in said fund for (1) maintenance, dredging, cleaning and improvement of harbors, inland waters and great ponds of the commonwealth, (2) the public access thereto, (3) the breakwaters, retaining walls, piers, wharves and moorings thereof, and (4) law enforcement and fire prevention.
Added by St.1989, c. 687, § 13. Amended by St.2004, c. 291, § 28, eff. Aug. 10, 2004.

§ 5H. Centennial celebrations; funds

For the celebration of the year 2000 or the year 2001 or any centennial celebration, any city or town may appropriate money annually during the five years preceding such year. Such city or town is hereby authorized to establish in its treasury a

special fund in which shall be deposited such sums as may be appropriated by it under the provisions of this section, and any and all sums received by way of income from the sale of commemorative items or from admission charges for commemorative ceremonies or events. All such sums received by the treasurer shall be kept separate from other moneys, funds or property of such city or town, and the principal and interest thereof may, from time to time upon the authorization of the mayor or city manager, as the case may be, the board of selectmen, or the majority of any special committee established to plan such celebration, be expended for the purposes of such celebration in the year of such celebration and in the year preceding or succeeding same. There shall be an accounting to the treasurer for the expenditure of all funds. Any surplus remaining in said special fund after such celebration is concluded shall be transferred by the treasurer into the treasury of such city or town.

Added by St.1998, c. 463, § 43.

§ 6. Towns; reserve funds for extraordinary expenditures; establishment

To provide for extraordinary or unforeseen expenditures, a town may at an annual or special town meeting appropriate or transfer a sum or sums not exceeding in the aggregate five per cent of the levy of the fiscal year preceding the fiscal year for which the fund, to be known as the reserve fund, is established. No direct drafts against this fund shall be made, but transfers from the fund may from time to time be voted by the finance or appropriation committee of the town, in towns having such a committee, and in other towns by the selectmen; and the town accountant in towns having such an official, and in other towns the auditor or board of auditors, shall make such transfers accordingly.

Amended by St.1969, c. 849, § 29B; St.1971, c. 766, § 7; St.1986, c. 651, § 2.

Historical and Statutory Notes

St.1912, c. 347.
St.1913, c. 645.

§ 6A. Advertising

A city or town which accepts the provisions of this section may appropriate annually a sum for the purpose of advertising its resources, advantages and attractions. The money so appropriated shall be expended under the direction of the mayor and city council of the city or the board of selectmen of the town. Two or more municipalities having resources, advantages or attractions in common may join in advertising the same hereunder.

Amended by St.1969, c. 849, § 30; St.1986, c. 547.

Historical and Statutory Notes

St.1930, c. 223.

§ 6B. Uniforms and other outer clothing for members of police and fire departments and shellfish constabulary; clothing allowance

A city or town which accepts or has accepted this section may appropriate money for the purchase of uniforms for members of its police and fire departments and its shellfish constabulary, which may include the purchase of rubber boots, shoes, and other outer clothing necessary for the use of members of the police and fire departments and shellfish constabulary when traveling to or from or during the course of their employment.

A city or town which appropriates money for uniforms for the uniformed members of its police force may appropriate money to be paid as a clothing allowance to an officer serving as a detective or required to work without a uniform; provided, that the sum so paid as a clothing allowance to a member, serving as a detective or required to work without a uniform, shall not in any event exceed any maximum amount established by a city or town as the amount that may be expended by the city or town during a given year, for uniform clothing, for a uniformed member of said force under the provisions of this section.

Amended by St.1957, c. 213; St.1962, c. 484; St.1965, c. 150; St.1973, c. 124.

Historical and Statutory Notes

St.1930, c. 351.

§ 6C. Removal of ice and snow from private ways; conditions

A city or town which accepts this section in the manner provided in section six D may appropriate money for the removal of snow and ice from such private ways within its limits and open to the public use as may be designated by the city council or selectmen; provided, that, for the purposes of section twenty-five of chapter eighty-four, the removal of snow or ice from such a way shall not constitute a repair of a way.

Added by St.1943, c. 225.

§ 6D. Removal of ice and snow from private ways; submission to electorate; ballot

Section six C shall be submitted for acceptance to the registered voters of a city at a regular city election if the city council thereof so votes, and of a town at an annual town election upon petition of two hundred registered voters or of twenty per cent of the total number of registered voters, substantially in the form of the following question, which shall be placed on the official ballot used for the election of officers at such city or town election:

Shall the city (or town) vote to accept the provisions of section six C of chapter forty of the General Laws, which authorize cities and towns to appropriate money for the removal of snow and ice from private ways therein open to public use?	YES.	
	NO.	

If a majority of the votes in answer to said question is in the affirmative, then said section shall thereupon take full effect in such city or town, but not otherwise.

Added by St.1943, c. 225.

§§ 6E to 6*I*. Repealed, 1977, 693, Sec. 1

Historical and Statutory Notes

See, now, c. 40, § 6N.

§ 6J. Stormy weather work clothes; purchase

A city or town which accepts this section may appropriate money for the purchase of stormy weather work clothes, including rubber boots, and other work clothes for its employees.

Added by St.1963, c. 190. Amended by St.1964, c. 90.

§ 6K. Uniforms of public health nurses; purchase

A city or town which accepts this section may appropriate money for the purchase of uniforms for public health nurses employed by its board of health.

Added by St.1964, c. 89.

§ 6L. Stormy weather work clothes; lease or rental

A city or town which accepts this section may appropriate money for the lease or rental of stormy weather work clothes, including rubber boots, and other work clothes for its employees, which lease or rental agreement may provide for periodical laundering and repairs.

Added by St.1969, c. 806.

§ 6M. Repealed, 1977, 693, Sec. 1

Historical and Statutory Notes

See, now, c. 40, § 6N.

§ 6N. Private ways; temporary repairs, ordinances or by-laws

Cities and towns may by ordinance or by-law provide for making temporary repairs on private ways. Such ordinance or by-law shall determine (*a*) the type and extent of repairs; (*b*) if drainage shall be included; (*c*) if the repairs are required by public necessity; (*d*) the number of percentage of abutters who must petition for such repairs; (*e*) if betterment charges shall be assessed; (*f*) the liability limit of the city or town on account of damages caused by such repairs; (*g*) if the ways shall have been opened to public use for a term of years; and (*h*) if a cash deposit shall be required for said repairs.

Added by St.1975, c. 551. Amended by St.1977, c. 693, § 2.

§ 6*O*. Group life insurance premiums; permanent employees

A city or town may pay part of the premiums for group life insurance for permanent employees under the provisions of section one hundred and thirty-three to one hundred and thirty-eight A, inclusive, of chapter one hundred and seventy-five. The amount of such insurance for any employees whose yearly gross compensation is less than two thousand dollars shall not exceed one thousand dollars, and for any employee whose yearly gross compensation is two thousand dollars or more, such amount shall not exceed two thousand dollars. Any increase in the amount of insurance made possible by an increase in compensation shall take effect on the next succeeding policy anniversary, but no reduction in the amount of insurance shall be required on account of a reduction in compensation. Yearly gross compensation shall not include any overtime pay, and, in the case of hourly workers, shall be computed on the basis of scheduled required work hours. Fifty percent of the amount of any premium thereon shall be paid by the town. Any dividends or other refunds or

rate credits shall inure to the benefit of the town and shall be applied to the cost of such insurance.
Added by St.1989, c. 687, § 14.

§ 7. Removal of ice and snow from sidewalks in towns

Any town which accepts this section or has accepted corresponding provisions of earlier laws may appropriate money for the removal of snow and ice from its sidewalks, in accordance with the provisions of section six of chapter eighty-five. This section shall not apply to cities.

Historical and Statutory Notes

St.1902, c. 205, § 1.
St.1917, c. 344, Pt. V, § 7, Pt. VIII, § 1.

§ 7A. Prevention of automobile accidents

Cities and towns may appropriate money for the purpose of conducting and maintaining a specific program of safety activities designed to prevent automobile accidents; and such appropriations shall be expended under the direction of the mayor in a city or the selectmen in a town.

Historical and Statutory Notes

St.1930, c. 365.

§ 8. Enforcement of laws relating to civil service

A city, or a town which accepts chapter thirty-one or has accepted corresponding provisions of earlier laws, may appropriate money for the enforcement therein of the laws relating to its civil service.

Historical and Statutory Notes

St.1887, c. 345.
R.L.1902, c. 26, § 24.
St.1902, c. 544, § 3.

§ 8A. Development and industrial commission; establishment; duties; membership; tenure; removals; vacancies

A city or town which accepts this section may establish a development and industrial commission for the promotion and development of the industrial resources of said city or town. Such commission shall conduct researches into industrial conditions, investigate and assist in the establishment of educational or commercial projects, including projects involving private enterprise, for the purpose of expanding or strengthening the local economy, and shall seek to co-ordinate the activities of unofficial bodies organized for said purposes, and may advertise, prepare, print and distribute books, maps, charts and pamphlets which in its judgment will further the purposes for which it is established. The commission may appoint such clerks and other employees as it may require.

Such commission shall consist of not less than five nor more than fifteen members. The members in cities shall be appointed by the mayor, subject to the provisions of the city charter, except in cities operating under a Plan D or Plan E form of city charter, said appointments shall be by the city manager, subject to the provisions of the city charter; and in towns they shall be appointed by the selectmen, excepting towns having a manager form of government, in which towns such appointments shall be made by the town manager. When a commission is first established, the terms of the members shall be for such length, not exceeding five years, and so arranged that the terms of approximately one fifth of the members will expire each year, and their successors shall be appointed for terms of five years each. Any member of a board so appointed in a city may be removed for cause after a public hearing, if requested, by the mayor with the approval of the city council. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term in a city in the same manner as an original appointment, and in a town as provided in section eleven of chapter forty-one.
Added by St.1954, c. 297, § 1. Amended by St.1955, c. 102, § 1; St.1961, c. 291.

§ 8B. Council on aging; establishment; annual reports; recommendations by department; clerks and employees

A city by ordinance or a town by by-law may establish a council on aging for the purpose of coordinating or carrying out programs designed to meet the problems of the aging in coordination with programs of the department of elder affairs. The council shall submit an annual report to the city or town and shall send a copy thereof to the department of elder affairs. Said department shall from time to time review and evaluate such reports and make recommendations as to any required or needed changes in said local programs. The council may appoint such clerks and other employees as it may require. The names, addresses, telephone numbers, or other identifying information about elderly persons in the possession of the council shall not be public records, but the use of these records shall comply with sections 14 to 24, inclu-

sive, of chapter 19A as a condition of receiving a government contract, program grant or other benefit, or as otherwise required by law.

Added by St.1956, c. 495, § 1. Amended by St.1957, c. 406, § 1; St.1964, c. 430, § 3; St.1966, c. 242; St.1973, c. 1168, § 17; St.2002, c. 41; St.2010, c. 454, § 29, eff. Jan. 14, 2011.

§ 8C. Conservation commission; establishment; powers and duties

A city or town which accepts this section may establish a conservation commission, hereinafter called the commission, for the promotion and development of the natural resources and for the protection of watershed resources of said city or town. Such commission shall conduct researches into its local land areas and shall seek to coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary for its work. Among such plans may be a conservation and passive outdoor recreation plan which shall be, as far as possible, consistent with the town master plan and with any regional plans relating to the area. The commission may, from time to time, amend such plan. Such plan shall show open areas including marsh land, swamps and other wetlands, and shall show which areas are subject to restrictions or wetland zoning provisions and any other matters which may be shown on a plat index under section thirty-three of chapter one hundred and eighty-four. Acquisitions of interests in land under this section and other municipal open lands shall be shown thereon as well as lands owned by other entities kept open through any legal requirement. Such plan shall show other areas which public necessity requires to be retained for conservation and passive recreation use. It shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the case of towns in the annual town report. The commission may appoint a director, clerks, consultants and other employees, and may contract for materials and services within available funds insofar as the same are not supplied by other departments. The commission shall consist of not less than three nor more than seven members. In cities the members shall be appointed by the mayor, subject to the provisions of the city charter, except that in cities having or operating under a Plan D or Plan E form of city charter, said appointments shall be by the city manager, subject to the provisions of the charter; and in towns they shall be appointed by the selectmen, excepting towns having a manager form of government, in which towns appointments shall be made by the town manager, subject to the approval of the selectmen. When a commission is first established, the terms of the members shall be for one, two or three years, and so arranged that the terms of approximately one third of the members will expire each year, and their successors shall be appointed for terms of three years each. Any member of a commission so appointed may, after a public hearing, if requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall in a city or town be filled for the unexpired term in the same manner as an original appointment. Said commission may receive gifts, bequests or devises of personal property or interests in real property of the kinds mentioned below in the name of the city or town, subject to the approval of the city council in a city or of the selectmen in a town. It may purchase interests in such land with sums available to it. If insufficient funds are available or other reasons so require, a city council or a town meeting may raise or transfer funds so that the commission may acquire in the name of the city or town by option, purchase, lease or otherwise the fee in such land or water rights, conservation restrictions, easements or other contractual rights including conveyances on conditions or with limitations or reversions, as may be necessary to acquire, maintain, improve, protect, limit the future use of or otherwise conserve and properly utilize open spaces in land and water areas within its city or town, and it shall manage and control the same. For the purposes of this section a city or town may, upon the written request of the commission, take by eminent domain under chapter seventy-nine, the fee or any lesser interest in any land or waters located in such city or town, provided such taking has first been approved by a two-thirds vote of the city council or a two-thirds vote of an annual or special town meeting, which land and waters shall thereupon be under the jurisdiction and control of the commission. Upon a like vote, a city or town may expend monies in the fund, if any, established under the provisions of this section for the purpose of paying, in whole or in part, any damages for which such city or town may be liable by reason of any such taking. The commission may adopt rules and regulations governing the use of land and waters under its control, and prescribe penalties, not exceeding a fine of one hundred dollars, for any violation thereof. No action taken under this

section shall affect the powers and duties of the state reclamation board or any mosquito control or other project operating under or authorized by chapter two hundred and fifty-two, or restrict any established public access. Lands used for farming or agriculture, as defined in section one A of chapter one hundred and twenty-eight, shall not be taken by eminent domain under the authority of this section.

A city or town may appropriate money in any year to a conservation fund of which the treasurer shall be the custodian. Prior to the adoption of any rule or regulation which seeks to further regulate matters established by section forty of chapter one hundred and thirty-one or regulations authorized thereunder relative to agricultural or aquacultural practice, the commission shall, no later than seven days prior to the commission's public hearing on the adoption of said rules and regulations, give notice of the said proposed rules and regulations to the farmland advisory board established pursuant to section forty of chapter one hundred and thirty-one. He may deposit or invest the proceeds of said fund in savings banks, trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Insurance Corporation, or national banks, or invest it in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth, and any income therefrom shall be credited to the fund. Money in said fund may be expended by said commission for any purpose authorized by this section; provided, however, that no expenditure for a taking by eminent domain shall be made unless such expenditure has been approved in accordance with this section. Added by St.1957, c. 223, § 1. Amended by St.1961, c. 258; St.1965, c. 768, § 2; St.1967, c. 885; St.1971, c. 893, §§ 1 to 3; St.1975, c. 18; St.1989, c. 687, §§ 15, 16; St.1996, c. 258, § 15.

§ 8D. Historical commission; establishment; powers and duties

A city or town which accepts this section may establish an historical commission, hereinafter called the commission, for the preservation, protection and development of the historical or archeological assets of such city or town. Such commission shall conduct researches for places of historic or archeological value, shall cooperate with the state archeologist in conducting such researches or other surveys, and shall seek to coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which it deems necessary for its work. For the purpose of protecting and preserving such places, it may make such recommendations as it deems necessary to the city council or the selectmen and, subject to the approval of the city council or the selectmen, to the Massachusetts historical commission, that any such place be certified as an historical or archeological landmark. It shall report to the state archeologist the existence of any archeological, paleontological or historical site or object discovered in accordance with section twenty-seven C of chapter nine, and shall apply for permits necessary pursuant to said section twenty-seven C. Any information received by a local historical commission with respect to the location of sites and specimens, as defined in section twenty-six B of chapter nine, shall not be a public record. The commission may hold hearings, may enter into contracts with individuals, organizations and institutions for services furthering the objectives of the commission's program; may enter into contracts with local or regional associations for cooperative endeavors furthering the commission's program; may accept gifts, contributions and bequests of funds from individuals, foundations and from federal, state or other governmental bodies for the purpose of furthering the commission's program; may make and sign any agreements and may do and perform any and all acts which may be necessary or desirable to carry out the purposes of this section. It shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the case of towns in the annual town report. The commission may appoint such clerks and other employees as it may from time to time require. The commission shall consist of not less than three nor more than seven members. In cities the members shall be appointed by the mayor, subject to the provisions of the city charter, except that in cities having a city manager form of government, said appointments shall be by the city manager, subject to the provisions of the charter; and in towns they shall be appointed by the selectmen, excepting towns having a town manager form of government, in which towns appointments shall be made by the town manager, subject to the approval of the selectmen. When a commission is first established, the terms of the members shall be for one, two or three years, and so ar-

ranged that the terms of approximately one third of the members will expire each year, and their successors shall be appointed for terms of three years each. Any member of a commission so appointed may, after a public hearing if requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall in a city or town be filled for the unexpired term in the same manner as an original appointment. Said commission may acquire in the name of the city or town by gift, purchase, grant, bequest, devise, lease or otherwise the fee or lesser interest in real or personal property of significant historical value and may manage the same.

Added by St.1963, c. 697, § 4. Amended by St.1971, c. 517, § 3; St.1973, c. 1155, § 7; St.1976, c. 14; St.1992, c. 136; St.1993, c. 336.

§ 8E. Youth commission; establishment; powers and duties

A city or town which accepts this section may establish a youth commission, hereinafter called the commission, for the purpose of carrying out programs which may be designed or established to meet the opportunities, challenges and problems of youth of said city or town and in conjunction with any similar or related programs of any agency of the commonwealth or any agency of the federal government. It shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the case of towns in the annual town report. The commission may appoint such clerks and other employees as it may from time to time require. The commission shall consist of not less than three nor more than twenty-one members. In cities the members shall be appointed by the mayor, subject to the provisions of the city charter, except that in cities having or operating under a plan D or plan E form of city charter, said appointments shall be by the city manager, subject to the provisions of the charter; and in towns they shall be appointed by the selectmen, excepting towns having a manager form of government, in which towns appointments shall be made by the town manager, subject to the approval of the selectmen. When a commission is first established, the terms of the members shall be for one, two or three years and so arranged that the terms of approximately one third of the members will expire each year, and their successors shall be appointed for a term of three years each. Any member of a commission so appointed may, after a public hearing, if requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall in a city or town be filled for the unexpired term in the same manner as an original appointment. Said commission may receive gifts of property, both real and personal, in the name of the city or town, subject to the approval of the city council in a city or the selectmen in a town, such gifts to be managed and controlled by the commission for the purposes of this section.

Added by St.1969, c. 391, § 1. Amended by St.1976, c. 26; St.1996, c. 473, § 1.

§ 8F. Consumer advisory commission; establishment; annual report; clerks and employees

A city by ordinance or a town by by-law may establish a consumer advisory commission for the purposes of conducting investigations and research into matters affecting consumer interests and education and of advising and reporting the results of such investigations and research to the general public as well as to local governmental authorities and law enforcement agencies. The commission shall submit an annual report to the city or town and shall send a copy thereof to the consumers' council of the commonwealth. The commission may appoint such clerks and other employees as it may require.

Added by St.1970, c. 153.

§ 8G. Mutual police aid programs; agreements

A city or town which accepts this section may enter into an agreement with another city or town, or other cities and towns including cities and towns in states contiguous to the commonwealth, to provide mutual aid programs for police departments to increase the capability of such departments to protect the lives, safety, and property of the people in the area designated in the agreement. Said agreement may include the furnishing of personal services, supplies, materials, contractual services, and equipment when the resources normally available to any municipality in the agreement are not sufficient to cope with a situation which requires police action. When providing such mutual aid, police officers shall have all the immunities and powers granted to them in the municipalities that employ them, including, but not limited to, powers of arrest.

While in transit to, returning from, and during a mutual aid response for another city or town, a participating police officer shall maintain the right of indemnification granted by law, or by his home

city or town, or both, for all claims arising out of any action within the scope of his employment in accordance with a valid mutual aid agreement. A mutual aid agreement may provide for methods of activation or requesting and responding to mutual aid requests. The agreement may also address issues such as pay and benefits for officers, insurance, indemnification, injury compensation and other operational matters related to police services provided for a mutual aid response. Nothing in this paragraph shall be construed to expand or otherwise modify existing police powers as provided by law or any existing mutual aid agreement or both.

Added by St.1972, c. 220, § 2. Amended by St.2003, c. 124, §§ 1, 2, eff. Feb. 24, 2004; St.2004, c. 81, eff. July 22, 2004.

§ 8H. Recycling programs

A city, town, or district may establish, by approval of the local legislative body, a recycling program for the purpose of recycling any type of solid waste including but not limited to paper, glass, metal, rubber, plastics, used tires and compostable waste. The program may be established for groups of cities, towns, or districts upon agreement of all municipalities or districts in a joint program.

Any recycling program established pursuant to this section may require that all residents, schools and businesses in a city or town separate from their solid waste those recyclables designated by the local legislative body. In cities and towns in which solid waste is collected at the curbside, the recycling program may include curbside collection of such recyclables. In cities and towns in which residents, schools or businesses may take their solid waste to a municipal landfill or transfer station, the recycling program shall include provision for the separation and storage at such landfill or transfer station of the solid waste being disposed by such resident, schools or businesses, and may include collection of recyclables at the curbside.

For purposes of this section, local legislative body shall mean the body of municipal government which is empowered to enact ordinances or by-laws and adopt an annual budget and other spending authorizations, whether styled as a city council, board of aldermen, town council, town meeting or by any other title. The department of environmental protection shall cooperate with local legislative bodies in the development of recycling programs, and no such program shall be established unless the municipality or district has first consulted with said department.

A city or town may appropriate money in any year to a recycling fund of which the treasurer shall be the custodian. He may deposit or invest the proceeds of said fund in savings banks, trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Insurance Corporation, or national banks, or invest it in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth, and any income therefrom shall be credited to the fund Money in said fund may be expended by said commission for any purpose authorized by this section, other than a taking by eminent domain.

Added by St.1976, c. 416, § 2. Amended by St.1987, c. 584, § 5; St.1989, c. 687, § 17; St.1990, c. 177, § 96.

§ 8I. Energy resources commission; powers and duties

A city or town which accepts this section may establish an energy resources commission, hereinafter called the commission, for the promotion and development of the energy resources of said city or town. Such commission shall: (1) develop and administer programs relating to energy conservation, nonrenewable energy supply and resource development, recycling, energy information, emergency heating assistance, and energy emergencies; (2) advise, assist, and cooperate with state, regional, and federal agencies in developing appropriate programs and policies relating to energy planning and regulation in the commonwealth including assistance and advice in the preparation of loan or grant applications with respect to energy programs for local agencies; (3) develop local energy data and information management capabilities to aid energy planning and decision-making; (4) promote the development of sound local energy education programs; (5) with the approval of the city or town, apply for, receive, expend, represent and act on behalf of the city or town in connection with federal grants, grant programs or reimbursements, or private grants, keep accounts, records, personal data, enter into contracts, and adjust claims; (6) accept gifts, grants, bequests, and devises, whether real or personal, from any source, whether public or private, for the purpose of assisting the commission in the discharge of its duties; (7) subject to

appropriation, acquire real or personal property; (8) promulgate rules and regulations necessary to carry out their statutory responsibilities; (9) seek to coordinate the activities of governmental or unofficial bodies organized for similar purposes, and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary for its work and it shall keep an index of all energy resources within such city or town with the objective of obtaining information pertinent to proper utilization of such resources; (10) it shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the case of towns in the annual town report. The commission may, subject to appropriation, appoint such clerks and other employees as it may from time to time require. The commission shall consist of not less than three nor more than seven members. In cities the members shall be appointed by the mayor, subject to the provisions of the city charter, except that in cities having or operating under a Plan D or Plan E form of city charter, said appointments shall be by the city manager, subject to the provisions of the charter; and in towns the members shall be appointed by the selectmen, except that in towns having a manager form of government appointments shall be made by the town manager, subject to the approval of the selectmen. In any city or town which has not accepted the provisions of section eight H, the energy resources commission may assume the powers and duties of a recycling commission.

When a commission is established, the initial terms of the members shall be for one, two or three years, and so arranged that the terms of approximately one-third of the members will expire each year, and their successors shall be appointed for terms of three years each.

Any member of a commission so appointed may, after a public hearing, if requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall, in a city, be filled for the unexpired term in the same manner as an original appointment, and, in a town, in the manner provided in section eleven of chapter forty-one.

Added by St.1980, c. 384.

§ 8J. Disability commission; powers and duties; members; terms

A city which accepts the provisions of this section by vote of its city council, subject to the provisions of its charter, or a town which accepts the provisions of this section at an annual or special town meeting, may establish a commission on disability, hereinafter called the commission, to cause the full integration and participation of people with disabilities in such city or town. Such commission shall (1) research local problems of people with disabilities; (2) advise and assist municipal officials and employees in ensuring compliance with state and federal laws and regulations that affect people with disabilities; (3) coordinate or carry out programs designed to meet the problems of people with disabilities in coordination with programs of the Massachusetts office on disability; (4) review and make recommendations about policies, procedures, services, activities and facilities of departments, boards and agencies of said city or town as they affect people with disabilities; (5) provide information, referrals, guidance and technical assistance to individuals, public agencies, businesses and organizations in all matters pertaining to disability; (6) coordinate activities of other local groups organized for similar purposes.

Said commission shall keep records of its meetings and actions and shall file an annual report which shall be printed in the city or town annual report and shall have at least ten meetings annually.

Said commission shall consist of not less than five nor more than nine members. In cities, the members shall be appointed by the mayor, subject to the provisions of the city charter except that in cities having a Plan D or Plan E form of government said appointments shall be by the city manager, subject to the provisions of the charter, and in towns they shall be appointed by the selectmen, except towns having a town manager form of government, in which towns appointments shall be made by the town manager, subject to the approval of the selectmen and except towns having a town council form of government, the town manager. A majority of said commission members shall consist of people with disabilities, one member shall be a member of the immediate family of a person with a disability and one member of said commission shall be either an elected or appointed official of that city or town. The terms of the first members of said commission shall be for one, two or three years, and so arranged that the term of one-third of the members expires each year, and their successor shall be appointed for terms of three years each. Any member of said commission may, after a pub-

lic hearing, if so requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment. The chairperson and other officers shall be chosen by a majority vote of said commission members.

Said commission may receive gifts of property, both real and personal, in the name of the city or town, subject to the approval of the city council in a city or the board of selectmen in a town, such gifts to be managed and controlled by said commission for the purposes of this section.

Added by St.1983, c. 75. Amended by St.1990, c. 260, § 10; St.1991, c. 390; St.1993, c. 214, § 1.

§ 8K. Mapping commissions; powers and duties; members

A city by ordinance or a town by by-law may establish a mapping commission for the purpose of developing or coordinating the development of comprehensive maps of the municipality, including, but not limited to, parcel boundaries, location of utility lines, pipelines, and other structures, land use or items of geographic or geological interest.

A mapping commission shall: (1) develop and administer programs relating to such mapping of the community; (2) advise, assist and cooperate with state, regional and federal agencies in developing appropriate programs and policies relating to such mapping; (3) with the approval of the city or town, apply for, receive, expend, represent and act on behalf of the city or town in connection with federal grants, grant programs or reimbursements or private grants; (4) accept gifts, grants, bequests and devises from any source, whether public or private, for the purpose of assisting the authority in the discharge of its duties; (5) seek to coordinate the activities of governmental and private bodies organized for similar purposes. Said commission shall seek to coordinate all mapping efforts in a city or town in order that duplicative efforts be minimized. A mapping commission may offer for sale any products of its efforts, including maps, reports or other materials.

The commission shall consist of not less than three nor more than seven members. In cities the members shall be appointed by the mayor, subject to the provisions of the city charter, except that in cities having or operating under a Plan D or Plan E form of city charter, said appointments shall be by the city manager, subject to the provisions of the charter; and in towns the members shall be appointed by the board of selectmen, except that in towns having a manager form of government appointments shall be made by the town manager, subject to the approval of the board of selectmen.

Added by St.1987, c. 32.

§ 9. Lease of building space for veterans' organizations; limitations; erection of armories; celebration of holidays

A city or town may, for the purpose of providing suitable headquarters for such post or posts of any veterans' organization incorporated or chartered by the congress of the United States, as have been in operation for at least three years, or for the purpose of providing suitable headquarters for a camp of the United Spanish War Veterans, or for a post of the Polish-American Veterans, Inc., of the Lithuanian War Veterans Organization, Inc., of the Unity War Veterans Association, Inc., Post No. 1, of the 3.54 American Veterans of World War II, AMVETS, of the Italian American War Veterans of the United States, Incorporated, of the Armenian American Veterans Association, Inc., of the War Veterans Civic Association of Massachusetts, Inc., for the Yankee Division Veterans Association or any chapter thereof, for a barracks of the Veterans of World War I of the U.S.A., for the United American Veterans of the U.S.A., Inc. or any chapter thereof, for the Massachusetts Vietnam-ERA Veterans Association, Inc. or any chapter thereof, or for the Vietnam Combat Veterans Combined Armed Forces or any chapter thereof lease for a period not exceeding five years building or parts of buildings which shall be under the direction and control of such post, camp or barracks subject to regulations made in cities by the mayor with the approval of the council and in towns by vote of the town, and for said purposes a town with a valuation of less than five million dollars may annually appropriate not more than two thousand dollars; a town with a valuation of five million dollars but not more than twenty-five million dollars may annually appropriate not more than three thousand dollars; a town with a valuation of more than twenty-five million dollars but not more than fifty million dollars may annually appropriate not more than four thousand dollars; a town with a valuation of more than fifty million dollars but not more than seventy-five million dollars may annually appropriate not more than five thousand dollars; a town with a valuation of more than seventy-five million dollars but not more than one hundred million dollars may annu-

ally appropriate not more than six thousand dollars; a town with a valuation of more than one hundred million dollars but not more than one hundred and twenty-five million dollars may annually appropriate not more than seven thousand dollars; a town with a valuation of more than one hundred and twenty-five million dollars but not more than one hundred and fifty million dollars may annually appropriate not more than ten thousand dollars; and a town with a valuation of more than one hundred and fifty million dollars may annually appropriate ten thousand dollars, and in addition three thousand dollars for each additional one hundred and fifty million dollars of valuation, or major fraction thereof. In addition to sums hereinbefore authorized by this section, a city or town with a valuation of more than one hundred and fifty million dollars may, for the purpose of providing suitable headquarters for a camp of the United Spanish War Veterans, lease for a period not exceeding five years a building or part of a building, which shall be under the direction and control of such camp, subject to regulations made in cities by the mayor, with the approval of the council, or by the city manager where the charter so provides, and in towns by vote of the town, and for such purpose may annually appropriate a sum not exceeding, in any one year, thirty-five hundred dollars. The city council of a city may, by a two-thirds vote appropriate money for armories for the use of the state militia, for the celebration of holidays, or the purpose of providing or defraying the expenses of suitable quarters for posts of the Grand Army of the Republic, including the heating and lighting of such quarters, and for other like public purposes to an amount not exceeding in any one year one-fiftieth of one per cent of its equalized valuation as defined in section one of chapter forty-four.

Amended by St.1933, c. 245, § 3; St.1935, c. 305; St.1936, c. 271; St.1937, c. 255; St.1946, c. 51; St.1946, c. 209, § 2; St.1946, c. 409, § 3; St.1947, c. 468, § 3; St.1947, c. 671; St.1949, c. 118, § 3; St.1949, c. 343, § 1; St.1949, c. 563, § 1; St.1950, c. 303; St.1952, c. 115; St.1952, c. 443; St.1953, c. 175; St.1953, c. 469; St.1959, c. 59, § 3; St.1960, c. 203; St.1960, c. 626, § 4; St.1961, c. 57; St.1964, c. 5; St.1969, c. 849, § 31; St.1974, c. 6; St.1982, c. 187; St.1985, c. 40; St.1986, c. 161.

Historical and Statutory Notes

St.1861, c. 165.
P.S.1882, c. 28, § 13.
R.L.1902, c. 26, § 28.
St.1915, c. 2.
St.1920, c. 254.
St.1921, c. 80.
St.1923, c. 122.

§ 9A. Repealed, 1949, 563, Sec. 2

Historical and Statutory Notes

See, now, c. 40, § 9.

§ 10. Public markets; establishment; conditions; regulation

A city, or a town having a population of not less than ten thousand, may provide and maintain one or more public markets, with suitable buildings and grounds, and for this purpose may acquire land by gift or purchase or lease the same, with or without buildings, and may make alterations in buildings and construct new buildings on land so acquired or leased. Any city or town which does not so maintain a public market shall upon a petition signed by not less than five per cent of its voters designate one or more streets or squares or other public places, suitably situated and approved by the department of agriculture, to be used by farmers as public market places. Such a petition shall be filed with the city or town clerk, and he shall determine whether it contains a sufficient number of signatures and whether such signatures are genuine, and when satisfied that the petition meets the requirements of this section, he shall so certify to the mayor or the chairman of the board of selectmen and shall also notify the commissioner of agriculture that the petition has been filed and state to him the date of filing. Any city or town which maintains a public market or market place in accordance with this section may, subject to the approval of the commissioner of agriculture, make rules and regulations for the management and use thereof, and may prescribe penalties for their violation, and may also designate a market master, who may be a police officer or other municipal officer or employee, and who shall have charge of such markets or market places and shall conduct them in the interest of the market men and their customers, shall enforce said rules and regulations, and shall maintain order within the market limits.

Historical and Statutory Notes

St.1915, c. 119.
St.1916, c. 79.
St.1919, c. 350, §§ 34, 35.
St.1920, c. 580.

§ 11. Prevention of forest fires

A town may appropriate money for the prevention of forest fires to an amount not exceeding one tenth of one per cent of its equalized valuation as defined in section one of chapter forty-four. Every such town with a valuation of one million seven

hundred and fifty thousand dollars or less which appropriates and expends money, with the approval of the director of the division of forests and parks in the department of environmental management, for apparatus to be used in preventing or extinguishing forest fires, or for making protective belts or zones and building or maintaining water holes or cisterns for fire protection purposes as a defense against forest fires, shall, upon the recommendation of said director, approved by the governor, receive from the commonwealth a sum equal to one half of the said expenditure; but no town shall receive more than five hundred dollars. A sum not exceeding ten thousand dollars may annually be expended by the commonwealth for this purpose. Whenever it has been demonstrated to the satisfaction of said director that such equipment has been destroyed or has become unfit for use, the town shall be reimbursed by the commonwealth one half the cost of replacing the same; provided that the amount paid to any one town in any one year shall not exceed one hundred dollars. All equipment purchased under this section shall be in the custody and care of the town forest warden. Said director or his deputies may inspect such equipment at such times as they may deem necessary.

Amended by St.1941, c. 490, § 9; St.1948, c. 355; St.1953, c. 535, § 2; St.1956, c. 573; St.1969, c. 849, § 32; St.1975, c. 706, § 88.

Historical and Statutory Notes

St.1897, c. 254, § 11.
R.L.1902, c. 25, § 17.
St.1910, c. 398.
St.1914, c. 262.
St.1919, c. 350, § 42.
St.1921, c. 252.

§ 11A. Beach districts; formation

For the purposes of clause (25A) of section five, any city may form a beach district, and the provisions of sections twelve B to twelve G, inclusive, shall, so far as pertinent, be applicable.

Added by St.1953, c. 576, § 3.

§ 12. Public baths and wash houses

A town which accepts this section, or has accepted corresponding provisions of earlier laws, by a two thirds vote at an annual meeting, may purchase or lease land, and erect, alter, enlarge, repair and improve buildings for public baths and wash houses, either with or without open drying grounds, and may make open bathing places, provide them with the requisite furniture, fittings and conveniences and provide instruction in swimming. Such town may establish rates for the use of such baths and wash houses, and appoint officers therefor, and may make by-laws for the government of such officers, and authorize them to make regulations for the management thereof and for the use thereof by non-residents of said town.

Historical and Statutory Notes

St.1874, c. 214, §§ 1 to 3.
P.S.1882, c. 27, §§ 13, 14.
St.1898, c. 125, §§ 1, 2.
R.L.1902, c. 25, §§ 20, 21.

§ 12A. Repealed, 1941, 598, Sec. 5

§ 12B. Beaches for public and recreational uses; formation of district; membership of control commission; annual audit

Two or more contiguous cities or towns may, in a city by vote of the city council thereof, and in a town by vote of the town at an annual meeting, form a district for the purpose of acquiring, whether by gift or otherwise, developing, maintaining and operating, within their territorial limits, beaches for public and recreational uses, and may pay over to the district treasurer, as provided in section twelve E, appropriations made for such purpose. Each of such districts shall be under the control of a commission which shall be appointed by, and the number and the terms of office of the members of which shall be determined by, a joint committee composed of the mayor and president of the city council, in each of such cities, and the chairman of the selectmen in each of such towns. In cities having both a city council and board of aldermen the president of the board of aldermen shall also be a member of such committee.

The director of accounts in the department of revenue shall cause an audit to be made annually of the accounts of all districts organized under the authority of this section, and for such purpose he and his duly accredited agents shall have access to all necessary papers, books and records. Said director shall apportion the cost of each audit among the several municipalities comprising the district on the basis of the taxable valuation of said municipalities as last established by the general court for state and county taxes, and submit the amounts of each apportionment to the state treasurer, who shall issue his warrant requiring the assessors of the cities and towns which comprise the district to assess a tax to the amount so appor-

tioned, and such amount shall be collected and paid to the state treasurer as provided by section twenty of chapter fifty-nine.

Added by St.1953, c. 576, § 1. Amended by St.1978, c. 514, § 17.

§ 12C. Construction of beach facilities; rules and regulations

Said commission shall construct, equip and maintain at beaches under its control public bathhouses with dressing rooms, lockers and toilet facilities, as well as parking facilities, and other recreational facilities, may make reasonable rules and regulations for the care, maintenance, protection, policing and equal public use of said beaches, bathhouses, parking areas, and other recreational facilities, and may make reasonable charges for all facilities installed. At least one attested copy of such rules and regulations shall be posted at such beaches and any violation thereof shall be punished by a fine of not more than twenty dollars for each offence.

Added by St.1953, c. 576, § 1.

§ 12D. Authority to incur indebtedness; limitation

A city or town which is a member of a beach district may incur indebtedness within the limit of indebtedness prescribed in section ten of chapter forty-four for the purpose of acquiring beaches and paying an assessment for the construction of a bathhouse and appurtenances, including parking areas and other recreational facilities, in a beach district, and each district is authorized to make such assessments.

Added by St.1953, c. 576, § 1.

§ 12E. Treasurer of district; appointment; bond; powers and duties

The treasurer of one of the municipalities comprising such district, designated by the commission, shall be treasurer of the district and shall give to the district a bond, with a surety company authorized to transact business in the commonwealth as surety, for the faithful performance of his duties as treasurer of the district in such sum and upon such conditions as the commissioner of revenue may require. The district treasurer shall disburse the money received under the provisions of section twelve B upon warrants.

Added by St.1953, c. 576, § 1. Amended by St.1978, c. 514, § 18.

§ 12F. Employees

Persons employed at such beaches shall be employees of the cities and towns in the district where they reside and not employees of the district, and shall retain all their retirement and civil service rights.

Added by St.1953, c. 576, § 1.

§ 12G. Leasing of concessions; procedure

Said commission may at any time in its discretion lease or let out upon such terms and conditions as it sees fit, concessions or grants to operate any bathhouse, parking area or any recreational facility to any persons or corporations, such concessions or grants, however, to be leased or let out after public hearing and then to the highest responsible bidder therefor.

Added by St.1953, c. 576, § 1.

§ 13. Municipal buildings insurance fund; management; use

A town which at a meeting, or a city which by its city council accepts this section, or has in like manner accepted corresponding provisions of earlier laws, may appropriate an amount not exceeding in any one year one twentieth of one per cent of its equalized valuation as defined in section one of chapter forty-four to establish and maintain a municipal buildings insurance fund from which any municipal buildings or other municipal property damaged or destroyed or lost by fire, lightning, vandalism, burglary, theft or otherwise, may be repaired, rebuilt or replaced by other buildings or property to be used in place thereof; but no money shall be appropriated for such purpose while the fund equals or exceeds one per cent of such equalized valuation. Such fund shall be managed and administered by the sinking fund commissioners of the town, if any, otherwise by the commissioners of trust funds of the town.

If a city or town which has established such a fund in accordance with this section has neglected or failed for a period of five consecutive years to appropriate for such fund, for any reason other than that the maximum amount authorized by this section has been accumulated, it may vote appropriations from such fund and the income therefrom for the purpose of paying a proper charge for effecting fire insurance on municipal buildings or other municipal property against loss or damage by fire, lightning or otherwise; provided, that nothing in this paragraph shall prevent any city or town

from appropriating money for effecting fire insurance under authority of any other general or special law applicable thereto.

Amended by St.1941, c. 130; St.1970, c. 12; St.1973, c. 613.

Historical and Statutory Notes

St.1905, c. 191, §§ 1 to 4.
St.1907, c. 576, §§ 102 to 105, 122.

§ 13A. Workers' compensation insurance funds; management

Any city or town which has accepted chapter eight hundred and seven of the acts of nineteen hundred and thirteen and which accepts this section, by vote of the city council or of the voters in town meeting, may appropriate an amount not exceeding in any one year one twentieth of one per cent of its equalized valuation as defined in section one of chapter forty-four, to establish and maintain an insurance fund to pay workers' compensation, from which any compensation payable under the provisions of sections sixty-nine to seventy-five, inclusive, of chapter one hundred and fifty-two shall be paid; but no money shall be appropriated for such purpose while the fund equals or exceeds one per cent of such equalized valuation. Such fund shall be managed and administered by the sinking fund commissioners of the city or town, if any, otherwise by the commissioners of trust funds of said city or town. If any city or town has such an insurance fund, it may appropriate from such fund, including the income thereof, such sums as may be necessary for the purpose of paying a proper charge for effecting insurance to cover its liability to pay workers' compensation.

Amended by St.1963, c. 127; St.1969, c. 849, § 33; St.1974, c. 274; St.1998, c. 463, § 44.

Historical and Statutory Notes

St.1923, c. 234.

§ 13B. Residence quarters for school physicians

A town of not exceeding three thousand inhabitants which accepts this section by vote in town meeting may appropriate for free residence quarters for a school physician a sum not exceeding five hundred dollars.

Historical and Statutory Notes

St.1925, c. 303, § 1.

§ 13C. Workers' compensation claims reserve funds

Any city or town which accepts the provisions of this section and has elected to self insure its worker's compensation may establish reserves to pay worker's compensation claims until said claims are fully paid. Said claims reserves shall be segregated by fiscal year and all funds so reserved shall be managed by a designated fiscal officer of such city or town. Any funds remaining after all claims are paid for a particular year, may be placed in another fiscal year's claim reserve fund, if needed, or returned to general funds. Costs of reinsurance, if used, and outside claims and safety services may be disbursed from said funds.

Added by St.1989, c. 455. Amended by St.1990, c. 177, § 97.

§ 14. Purchase of land; conditions; limitations; definition

The aldermen of any city, except Boston, or the selectmen of a town may purchase, or take by eminent domain under chapter seventy-nine, any land, easement or right therein within the city or town not already appropriated to public use, for any municipal purpose for which the purchase or taking of land, easement or right therein is not otherwise authorized or directed by statute; but no land, easement or right therein shall be taken or purchased under this section unless the taking or purchase thereof has previously been authorized by the city council or by vote of the town, nor until an appropriation of money, to be raised by loan or otherwise, has been made for the purpose by a two thirds vote of the city council or by a two thirds vote of the town, and no lot of land shall be purchased for any municipal purpose by any city subject to this section for a price more than twenty-five per cent in excess of its average assessed valuation during the previous three years.

The words "municipal purpose", as used in this section, shall include any such land, easement or right therein within the city or town, so purchased or taken by eminent domain for the purpose of conveying or granting the same to the commonwealth for the use of a regional community college.

Amended by St.1933, c. 283, § 1; St.1967, c. 59, § 3.

Historical and Statutory Notes

St.1848, c. 237, § 1.
St.1851, c. 186.
St.1855, c. 318.
G.S.1860, c. 38, § 38.
St.1869, c. 411, § 1.
St.1874, c. 342.

P.S.1882, c. 27, § 43; c. 44, § 49.
St.1894, c. 145.
St.1897, c. 299, §§ 1, 4.
St.1899, c. 379, §§ 1, 4.
St.1900, c. 437.
R.L.1902, c. 25, §§ 45, 47.
St.1915, c. 143.
St.1915, c. 263.
St.1918, c. 291, §§ 6, 8.
St.1921, c. 486, § 7.
St.1923, c. 266.
St.1925, c. 272.

§ 15. Abandonment of rights in realty; conditions

If any officer of a city or town having charge of any land, easement or right taken for such city or town, otherwise than by purchase, notifies the city council or the selectmen that, in his opinion, such land, easement or right, or part thereof, is no longer required for public purposes, and if thereafter the city council or the inhabitants of the town by a two thirds vote authorize the conveyance of such land, or of part thereof, or the abandonment of such easement or right, or part thereof, and specify the minimum amount to be paid for such conveyance or abandonment, the mayor or the selectmen may, for such amount or a larger amount, and upon such other terms as the mayor or selectmen shall consider proper, convey said land, or part thereof, by deed, or declare said easement or right, or part thereof, to be abandoned. Such declaration, being recorded in the registry of deeds for the district where the land is situated, shall extinguish the easement or right, or part thereof.

No land heretofore or hereafter acquired by eminent domain by one city or town within the limits of another city or town shall be conveyed under this section unless the mayor or selectmen authorized to convey such land offer to convey such land to the city or town wherein such land lies for the minimum amount specified as aforesaid, nor unless such offer is not accepted within six months after notice thereof is given to the mayor or selectmen of the city or town wherein such land lies by the mayor or selectmen authorized to convey, nor unless such conveyance is made within three months after the expiration of said six months. Land so offered to a city or town wherein it lies may be purchased by such city or town whether or not needed for the municipal purposes of such city or town, and, if so purchased and if such land is not needed for municipal purposes, it shall be disposed of as such city or town shall determine.
Amended by St.1958, c. 680; St.1961, c. 117.

Historical and Statutory Notes

St.1901, c. 294.
R.L.1902, c. 25, § 50.

§ 15A. Transfer of land; procedure

Whenever a board or officer having charge of land, including land acquired for playground purposes pursuant to the provisions of section fourteen of chapter forty-five, but excluding land acquired for park purposes, constituting the whole or any part of an estate held by a city or town within its limits for a specific purpose shall determine that such land is no longer needed for such purpose, whether such land was acquired before or after the effective date of this section and whether acquired by eminent domain, purchase, gift, devise or otherwise, such board or officer shall forthwith give notice of such determination to the city council of the city or the board of selectmen of the town. At any time after the receipt of such notice, the city council of the city by a two thirds vote of all its members, in the case of a city having a city manager, with the approval of said city manager, and in the case of other cities, with the approval of the mayor, or the town by a two thirds vote at a regular or special town meeting, may transfer the care, custody, management and control of such land to the same or another board or officer of the city or town for another specific municipal purpose, any provision of general or special law to the contrary notwithstanding; provided, that no such transfer shall be valid if it is in violation of any term or condition of the title of the city or town to such land.

In any city or town which accepts the provisions of this paragraph, when land is being transferred for the purpose of constructing low and moderate income housing, the vote required of the city council or the town meeting shall be by a majority vote.
Added by St.1951, c. 798, § 4. Amended by St.1954, c. 105; St.1989, c. 235.

§ 15B. Water supply works; sale or exchange of property

A town, city, or district authorized to furnish water for domestic purposes, may, with the advice and approval of the state department of environmental protection, sell at public or private sale, or may exchange any real property, or any easements, whether taken by eminent domain or otherwise, no longer needed for public water supply works under its charge, or may from time to time lease any property not then so needed, or may permit the use

thereof by the public for recreational purposes; and may in its discretion, by lease, license or other agreement, permit the construction and maintenance on any land under its control of towers, poles, wires, and other structures for the purpose of transmitting electric power over lands and water held for water supply purposes; provided, that such lease, license or agreement will not, in the opinion of the said department, affect or interfere with the water supply; and provided, further, that said city, town or district may, with the approval of said department, revoke said lease, license or agreement for cause to be determined by it.

No land acquired by eminent domain by a city or town within the limits of another city or town, and no land of a district so acquired, may be sold or exchanged pursuant to this section unless it is offered to be conveyed to the city or town wherein it lies for a minimum amount, specified by vote of the city council or a town or district meeting, for which the city, town or district owning it is willing to sell it, nor unless such offer is not accepted within six months after notice thereof is given to the mayor or selectman of the city or town wherein such land lies, nor unless such conveyance is made within three months after the expiration of such six months.

Added by St.1957, c. 552. Amended by St.1969, c. 555, § 1; St.1975, c. 706, § 89; St.1990, c. 177, § 98.

§ 15C. Scenic road designations; improvements; fines

Upon recommendation or request of the planning board, conservation commission or historical commission of any city or town, such city or town may designate any road in said city or town, other than a numbered route or state highway as a scenic road; provided, however, that a numbered route may be designated by a city or town as a scenic road if its entire length is contained within the boundaries of said city or town, and no part of said route is owned or maintained by the commonwealth.

After a road has been designated as a scenic road any repair, maintenance, reconstruction, or paving work done with respect thereto shall not involve or include the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the planning board, or if there is no planning board, the selectmen of a town, or the city council of a city, after a public hearing duly advertised twice in a newspaper of general circulation in the area, as to time, date, place and purpose, the last publication to occur at least seven days prior to such hearing; provided, however, that when a public hearing must be held under the provisions of this section and under section three of chapter eighty-seven prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, or if there is no planning board, the selectmen of a town, or the city council of a city, and notice of such consolidated public hearing shall be given by the tree warden or his deputy as provided in said section three of chapter eighty-seven. Any city or town making said scenic road designation may make an ordinance or by-law establishing that a violation of this paragraph shall be punished by a fine not to exceed three hundred dollars.

Designation of a road as a scenic road shall not affect the eligibility of a city or town to receive construction or reconstruction aid for such road pursuant to the provisions of chapter ninety.

Added by St.1973, c. 67. Amended by St.1979, c. 552, § 1; St.1985, c. 384; St.1989, c. 360.

§ 16. Street sprinkling

A town may sprinkle or spread upon its public ways, or parts thereof, any liquid or material suitable for laying or preventing dust and preserving the surface of such ways or for sanitary purposes, may appropriate money therefor, and determine that with respect to the whole or any part of such ways the whole or any part of such expense shall be assessed upon the estates abutting thereon.

Historical and Statutory Notes

St.1890, c. 365.
St.1891, c. 179, §§ 1, 4.
St.1895, c. 186.
St.1897, c. 419, § 1.
R.L.1902, c. 25, § 22; c. 26, § 25.
St.1908, c. 452.
St.1909, c. 289.
St.1917, c. 344, Pt. IV, § 6, Pt. VIII, § 1.

§ 17. Assessment

If a city determines that the public ways or any portion thereof shall be sprinkled in whole or in part at the expense of the abutters, such expense for a municipal year, and the proportion thereof to be borne by abutters, and the rate to be assessed upon each linear foot of frontage upon such ways, shall be estimated and determined by the board of aldermen and assessed upon the estates abutting on such ways in proportion to the number of linear

feet of each estate upon such ways or portion thereof sprinkled. The amount of such assessments upon each estate shall be determined by said board, or, if said board so designates, by the board of public works, board of street commissioners, superintendent of streets or other officer; and such board or officer shall, as soon as may be after the first day of January, cause a list of such ways or portions thereof to be made, specifying each estate and the number of linear feet thereof abutting thereon, the amount per linear foot, and the amount on each estate of such assessment, and certify and commit said list to the assessors of taxes. In a town such assessment shall be made by the assessors.

Amended by St.1933, c. 254, § 2.

Historical and Statutory Notes

St.1890, c. 365.
St.1891, c. 179, §§ 2 to 4.
St.1895, c. 186.
St.1897, c. 419, §§ 2, 3.
R.L.1902, c. 25, § 22; c. 26, § 26.
St.1908, c. 452.
St.1909, c. 440, § 2.
St.1914, c. 198, § 3.

§ 18. Collection of assessment

The assessors shall include such assessment in the tax list and warrant committed by them to the collector of taxes for that municipal year, and it shall be included in the next annual tax bill, or if the estate so assessed is otherwise exempt from taxation, it shall be rendered as a tax bill. Such assessment shall be a lien upon the estate, and shall be levied, collected, reassessed, paid, apportioned, and bear interest and become payable, in the same manner as, and shall be a part of, the tax for that year on such estate; but in cities the assessors shall make no abatement thereof except upon the recommendation of the board or officer by whom the list was certified to them.

Historical and Statutory Notes

St.1891, c. 179, §§ 3, 4.
St.1895, c. 186.
St.1897, c. 419, §§ 3, 4.
R.L.1902, c. 25, § 22; c. 26, § 27.
St.1908, c. 452.

§ 19. Appropriation of money for providing common necessaries during war or other public exigency; purposes; use of funds

For the purpose of maintaining, distributing and providing at reasonable rates during time of war, public exigency, emergency or distress a sufficient supply of food, other common necessaries of life and temporary shelter for their inhabitants, towns may raise and appropriate money outside of any limit imposed by law upon their tax rate or debt; but any bond, note or certificate of indebtedness issued therefor shall be payable in not more than two years from the date of its issue. The receipts from any undertaking or service authorized by this section shall not by applied to municipal purposes, other than those herein described, so long as there are any obligations outstanding issued on account of any such undertaking or service. The expenditure of all money so appropriated shall be under the direction of the mayor, or of an officer appointed by the mayor, with the approval of the city council in cities other than Boston, and in towns shall be under the direction of the selectmen or of an officer appointed by them.

Historical and Statutory Notes

St.1918, c. 205, §§ 1, 4, 5.
St.1931, c. 426, § 155.

§ 20. Selling price of necessities; accounting

Articles furnished or services rendered under the preceding section shall be charged for, so far as practicable, at rates calculated to cover all costs and charges connected with the particular undertaking or service, and shall be paid for in cash at the time of delivery or performance. Any town acting under said section shall keep accounts, in the form prescribed by the director of accounts, covering separately, so far as practicable, the cost of the particular undertaking or service in respect to each commodity included therein; and a report in detail of receipts and expenditures connected with such undertaking or service shall be included in the annual report of the town treasurer.

Historical and Statutory Notes

St.1918, c. 205, §§ 2, 3.
St.1919, c. 350, § 54.

§ 21. By-laws of towns; purpose

Towns may, for the purposes hereinafter named, make such ordinances and by-laws, not repugnant to law, as they may judge most conducive to their welfare, which shall be binding upon all inhabitants thereof and all persons within their limits. They may, except as herein provided, affix penalties for breaches thereof not exceeding three hundred dollars for each offense, which shall enure to the town or to such uses as it may direct. Notwithstanding the provisions of any special law to the contrary, fines shall be recovered by indictment or

on complaint before a district court, or by non-criminal disposition in accordance with section twenty-one D.

(1) For directing and managing their prudential affairs, preserving peace and good order, and maintaining their internal police.

(2) For preventing the fall of snow and ice from roofs and securing the removal thereof in such portions of their limits and to such extent as they deem expedient. The penalty for violation of such by-laws shall apply to the owner of such building or to his agent having the care thereof.

(3) For providing for the removal of snow and ice from the sidewalks, within the limits of the public ways therein to such extent as they deem expedient. The penalty for the violation of such by-laws shall apply to the owner of abutting property or his agent having charge thereof.

(4) For requiring owners of buildings near the line of public ways to erect barriers, or to take other suitable measures to prevent the fall of snow and ice therefrom upon persons traveling on such ways, and to protect such persons from other dangers incident to the maintenance, occupation or use thereof.

(5) For declaring any sewer or drain laid in any land or way, public or private, opened or proposed to be opened for public travel, to be a common sewer, and that it shall not be laid or connected with any existing common sewer except by the board or officers authorized to lay and maintain common sewers.

(6) For regulating, under a penalty not exceeding fifty dollars for each offence, the use of the common sewers and the connections which may be made therewith.

(7) For regulating throughout the town or within a limited portion thereof, by any designated board or commission, the inspection, materials, construction, alteration or use of pipes and fixtures through which water is supplied by public water works; and to prohibit the use of such water by persons neglecting or refusing to comply with such by-laws.

(8) For regulating, under a penalty not exceeding fifty dollars for each offence, the use of reservoirs connected with its water supply and land and driveways appurtenant thereto.

(9) For regulating the width of tires of vehicles owned in such town and used on the highways thereof.

(10) For requiring and regulating the numbering of buildings on or near the line of public or private ways and prescribing by whom and the method in which it shall be done.

(11) For regulating the disposal by town boards, officers or departments of personal property belonging to the town.

(12) For regulating the making of annual reports by boards, officers or departments not required by law to make such reports.

(13) For requiring all town officers to pay all fees received by them by virtue of their office into the town treasury, or to report the amount thereof from time to time to the selectmen, who shall publish the same in the annual town report.

(14) For prohibiting or regulating the leaving of vehicles unattended within the limits of private ways furnishing means of access for fire apparatus to any building.

(15) For regulating the use, occupation and maintenance, by clubs or associations, whether or not incorporated, of dwelling houses used in common by any or all of their members. In addition to any other remedy provided by law for violation of any ordinance or by-law made under authority of this paragraph, the superior court shall have jurisdiction in equity to restrain any such violation.

(16) For authorizing the superintendent of streets or other officer having charge of ways, for the purpose of removing or plowing snow, or removing ice, from any way, to remove, or cause to be removed, to some convenient place, including in such term a public garage, any vehicle interfering with such work, and for imposing liability for the cost of such removal, and of the storage charges, if any, resulting therefrom, upon the owner of such vehicle.

(16A) For authorizing the board or officer having charge of the collection of garbage and refuse, for the purpose of facilitating such collection, to remove, or cause to be removed, to some convenient place in the city or town, including in such term a public garage, from any portion of a public way therein or from any private way therein open to public use any vehicle parked contrary to a sign within one hundred feet banning parking at such time and place, and for imposing liability for the cost of such removal, and of the storage charges, if any, resulting therefrom, upon the owner of such vehicle.

(16B) For designating areas upon public streets to be used as bicycle lanes and for establishing a noncriminal ticketing procedure against violations of bicycle laws, and a schedule of fines for breaches thereof, not to exceed twenty dollars for each offense.

(17) For prohibiting or regulating the removal of soil, loam, sand or gravel from land not in public use in the whole or in specified districts of the town, and for requiring the erection of a fence or barrier around such area and the finished grading of the same. The superior court shall have jurisdiction in equity to compel compliance with any ordinance or by-law made hereunder. The penalty for violation of any ordinance or by-law made hereunder shall be as follows:—for the first offence, fifty dollars; for the second offence, one hundred dollars; and for each subsequent offence, two hundred dollars. Any order or by-law prohibiting such removal hereunder shall not apply to any soil, loam, sand or gravel which is the subject of a permit or license issued under the authority of the town or by the appropriate licensing board of such town or by the board of appeal, or which is to be removed in compliance with the requirements of a subdivision plan approved by the town planning board.

(18) For regulating the inspection, materials, construction, installation, alteration or use of pipes, fittings and fixtures through which gas is supplied within buildings and other structures.

(19) For requiring any person excavating land or any person in charge of such excavation and for requiring any owner of land which has been excavated to erect barriers or take other suitable measures within two days after such person has been notified in writing by the mayor or city manager and the city council, the selectmen or the building inspector, of the city or town in which the land is located that in their opinion such excavation constitutes a hazard to public safety. The penalty for violation of any ordinance or by-law made hereunder shall not exceed two hundred dollars per day for every day such person is in violation of such notice commencing with the fourth day thereof. The superior court shall have jurisdiction in equity to compel compliance with any ordinance or by-law made under the provisions of this clause. Notwithstanding the foregoing, no person shall be found guilty of a violation of such an ordinance or by-law, nor shall a person be compelled in equity to comply therewith unless, in the opinion of the court, such excavation constitutes a hazard.

(20) For requiring owners of land whereon is located an abandoned well or a well in use, to either provide a covering for such well capable of sustaining a weight of three hundred pounds or to fill same to the level of the ground. The penalty for violation of any ordinance or by-law made hereunder shall be a fine of not less than one hundred dollars nor more than five hundred dollars.

(21) For prohibiting or regulating the parking of any motor vehicle in front of any dwelling house except by the occupants of said dwelling house, provided that notice of said prohibition or regulation is given by the use of portable or permanent signs.

(22) For controlling and abating noise from whatever source, including, without limiting the generality of the foregoing, the right to restrict or limit the use of automobile horns and the operation of motor vehicles in such a manner as to cause excessive noise.

(23) For requiring that designated parking spaces for vehicles either owned and operated by disabled veterans or by handicapped persons and bearing the distinctive number plates authorized by section two of chapter ninety, or for vehicles transporting handicapped persons and displaying the special parking identification plate authorized by said section two of said chapter ninety, or for vehicles bearing the official identification of a handicapped person issued by any other state, or any Canadian Province, be provided in public and private off-street parking areas.

(a) Any ordinance or by-law made hereunder shall require any person or body that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for businesses, shopping malls, theaters, auditoriums, sporting or recreational facilities, cultural centers, residential dwellings, or for any other place where the public has a right of access as invitees or licensees, to reserve parking spaces in said off-street parking areas for any vehicle owned and operated by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate authorized by said section two of said chapter ninety or for any vehicle transporting a handicapped person and displaying the special identification plate authorized by section two of chapter ninety or for any vehicle bearing the official identification of a handicapped person issued by any other state, or any Canadian Province, according to the following formula:—

If the number of parking spaces in any such area is more than fifteen but not more than twenty-five, one parking space; more than twenty-five but not more than forty, five per cent of such spaces but not less than two; more than forty but not more than one hundred, four per cent of such spaces but not less than three; more than one hundred but not more than two hundred, three per cent of such spaces but not less than four; more than two hundred but not more than five hundred, two per cent of such spaces but not less than six; more than five hundred but not more than one thousand, one and one-half per cent of such spaces but not less than ten; more than one thousand but not more than two thousand, one per cent of such spaces but not less than fifteen; more than two thousand but less than five thousand, three-fourths of one per cent of such spaces but not less than twenty; and more than five thousand, one-half of one per cent of such spaces but not less than thirty.

(b) Parking spaces designated as reserved under paragraph (a) shall be identified by the use of above-grade signs with white lettering against a blue background and shall bear the words "Handicapped Parking: Special Plate Required. Unauthorized Vehicles May be Removed at Owner's Expense". The spaces shall be as near as possible to a building entrance or walkway, shall be adjacent to curb ramps or other unobstructed methods permitting sidewalk access to a handicapped person and shall be at least 8 feet wide, not including the cross hatch access aisle as defined by the architectural access board established in section 13A of chapter 22. The cross hatch access aisle abutting a handicapped parking space shall be considered part of the handicapped parking space to which it abuts to provide individuals who use wheelchairs or other mobility aids with sufficient space to enter and exit their vehicles. No person shall park in the cross hatched access aisle.

(24) For prohibiting or regulating the standing or leaving of vehicles unattended within parking spaces designated as reserved for vehicles owned and operated by disabled veterans or handicapped persons and within certain other areas.

An ordinance or by-law made under this section shall prohibit or regulate the leaving of unauthorized vehicles within parking spaces, including the cross hatch areas, designated for use by disabled veterans or handicapped persons as authorized by clause (23) or in such a manner as to obstruct a curb ramp designed for use by a handicapped person as a means of egress to a street or public way.

The penalty for a violation of an ordinance or by-law made under this section shall be not less than $100 nor more than $300 and shall provide for the removal of the vehicle in accordance with section 22D. This penalty shall not be a surchargeable offense under section 113B of chapter 175.

Amended by St.1941, c. 346, § 1; St.1949, c. 98; St.1951, c. 352; St.1952, c. 594; St.1953, c. 319, § 8; St.1953, c. 402; St.1954, c. 213; St.1955, c. 24; St.1956, c. 509; St.1957, c. 436; St.1959, c. 220; St.1961, c. 383; St.1965, c. 316; St.1967, c. 870; St.1969, c. 383; St.1970, c. 470; St.1971, c. 83; St.1973, c. 317; St.1973, c. 806, § 1; St.1974, c. 424, § 1; St.1975, c. 107; St.1977, c. 401, § 1; St.1981, c. 109; St.1981, c. 644, § 1; St.1985, c. 632, § 1; St.1986, c. 251, § 1; St.1990, c. 326, § 1; St.1991, c. 468; St.2000, c. 384, § 9; St.2002, c. 450, §§ 1, 2; St.2008, c. 76, §§ 1, 2, eff. July 9, 2008.

C.L. c. 147.
St.1692–3, c. 28, § 5.
St.1785, c. 75, § 7.
St.1801, c. 62.
St.1827, c. 106.
St.1829, c. 29.
St.1832, c. 148.
St.1834, c. 29.
St.1834, c. 81.
R.S.1836, c. 15, §§ 13, 14.
St.1847, c. 166.
G.S.1860, c. 18, §§ 11, 12, 15.
St.1863, c. 86.
St.1875, c. 105, §§ 1, 2.
St.1876, c. 139.
St.1878, c. 91.
P.S.1882, c. 27, §§ 15, 16, 17, 18, 19, 22.
St.1895, c. 227.
St.1895, c. 296.
St.1897, c. 116, § 1.
St.1898, c. 190, § 1.
R.L.1902, c. 25, § 23.
St.1918, c. 291, § 3.
St.1920, c. 591, §§ 3, 5.
St.1928, c. 319.
St.1931, c. 159.

§ 21A. Powers of cities and towns; regulation of working conditions of employees

A town by by-law and a city by ordinance, unless repugnant to the charter of such city, may establish the hours, days and weeks of work and the hours, days and weeks of leave without loss of pay, including, without limiting the generality of the foregoing, holiday leave, vacation leave and sick leave, for any or all employees of such town or city other than those appointed by the school committee; provided, that the number of working hours, days or weeks so established shall not exceed, and the number of hours, days or weeks of leave without loss of pay shall not be less than, the number prescribed by any general or special law applicable

to such town or city on the first day of January, nineteen hundred and fifty-two.
Added by St.1951, c. 798, § 5.

§ 21B. Personnel relations review board; establishment; purpose; "grievance", defined

Any town by by-law adopted at an annual town meeting, any city having a Plan D or Plan E charter by ordinance adopted in accordance with the provisions of its charter, and any other city by ordinance approved by its mayor may establish a personnel relations review board and may empower such board to adjust the grievances of all employees of such town or city other than those appointed by the school committee; provided, that such a board, by such an adjustment, shall not involve the city or town in an expenditure of money in excess of the appropriation made for the use of such board. As used in this section, the word "grievance" shall be construed to mean any dispute between an employee of a city or town and his appointing authority arising out of an exercise of administrative discretion by such authority under the contract of employment between the employee and the city or town, except a dispute concerning a change in one or more of the terms of such contract and except also a dispute which is, or upon proper appeal would be, within the jurisdiction of the civil service commission or the contributory retirement appeal board. No ordinance establishing in any city a personnel relations review board required by this section to be approved by the mayor of such city shall be amended except by ordinance likewise approved.
Added by St.1955, c. 294.

§ 21C. Union conventions; leave of absence

An employee of a city or town which accepts this section may be granted a leave of absence with pay while attending a convention of an employee union as an officer, delegate or alternate delegate.
Added by St.1963, c. 233.

§ 21C½. Employees who are veterans; participation in Veterans or Memorial Day exercises; time off granted; exceptions

An employee of a city or town which accepts the provisions of this section who is a veteran as defined in clause Forty-third of section seven of chapter four or is a member of a department of war veterans listed in section seventeen of chapter eight, and who desires to participate in a Veterans Day or Memorial Day exercise, parade or service, may be allowed and granted a reasonable and sufficient period of time off from his duties to attend and participate in such services or exercises. This section shall not apply to employees whose duties and services are critical and essential to the public safety as determined by ordinance or by-law, and the city or town may determine whether such time shall be with or without pay.
Added by St.1990, c. 503, § 2.

§ 21D. Noncriminal disposition of ordinance, by-law, rule or regulation violations

Any city or town may by ordinance or by-law not inconsistent with this section provide for non-criminal disposition of violations of any ordinance or by-law or any rule or regulation of any municipal officer, board or department the violation of which is subject to a specific penalty.

Any such ordinance or by-law shall provide that any person taking cognizance of a violation of a specific ordinance, by-law, rule or regulation which he is empowered to enforce, hereinafter referred to as the enforcing person, as an alternative to initiating criminal proceedings shall, or, if so provided in such ordinance or by-law, may, give to the offender a written notice to appear before the clerk of the district court having jurisdiction thereof at any time during office hours, not later than twenty-one days after the date of such notice. Such notice shall be in triplicate and shall contain the name and address, if known, of the offender, the specific offense charged, and the time and place for his required appearance. Such notice shall be signed by the enforcing person, and shall be signed by the offender whenever practicable in acknowledgment that such notice has been received.

The enforcing person shall, if possible, deliver to the offender a copy of said notice at the time and place of the violation. If it is not possible to deliver a copy of said notice to the offender at the time and place of the violation, said copy shall be mailed or delivered by the enforcing person, or by his commanding officer or the head of his department or by any person authorized by such commanding officer, department or head to the offender's last known address, within fifteen days after said violation. Such notice as so mailed shall be deemed a sufficient notice, and a certificate of the

person so mailing such notice that it has been mailed in accordance with this section shall be prima facie evidence thereof.

At or before the completion of each tour of duty, or at the beginning of the first subsequent tour of duty, the enforcing person shall give to his commanding officer or department head those copies of each notice of such a violation he has taken cognizance of during such tour which have not already been delivered or mailed by him as aforesaid. Said commanding officer or department head shall retain and safely preserve one copy and shall, at a time not later than the next court day after such delivery or mailing, deliver the other copy to the clerk of the court before which the offender has been notified to appear. The clerk of each district court and of the Boston municipal court shall maintain a separate docket of such notices to appear.

Any person notified to appear before the clerk of a district court as hereinbefore provided may so appear and confess the offense charged, either personally or through a duly authorized agent or by mailing to the city or town clerk of the municipality within which the violation occurred together with the notice such specific sum of money not exceeding three hundred dollars as the town shall fix as penalty for violation of the ordinance, by-law, rule or regulation. Such payment shall if mailed be made only by postal note, money order or check. Upon receipt of such notice, the city or town clerk shall forthwith notify the district court clerk of such payment and the receipt by the district court clerk of such notification shall operate as a final disposition of the case. An appearance under this paragraph shall not be deemed to be a criminal proceeding. No person so notified to appear before the clerk of a district court shall be required to report to any probation officer, and no record of the case shall be entered in any probation records.

If any person so notified to appear desires to contest the violation alleged in the notice to appear and also to avail himself of the procedure established pursuant to this section, he may, within twenty-one days after the date of the notice, request a hearing in writing. Such hearing shall be held before a district court judge, clerk, or assistant clerk, as the court shall direct, and if the judge, clerk, or assistant clerk shall, after hearing, find that the violation occurred and that it was committed by the person so notified to appear, the person so notified shall be permitted to dispose of the case by paying the specific sum of money fixed as a penalty as aforesaid, or such lesser amount as the judge, clerk or assistant clerk shall order, which payment shall operate as a final disposition of the case. If the judge, clerk, or assistant clerk shall, after hearing, find that violation alleged did not occur or was not committed by the person notified to appear, that finding shall be entered in the docket, which shall operate as a final disposition of the case. Proceedings held pursuant to this paragraph shall not be deemed to be criminal proceedings. No person disposing of a case by payment of such a penalty shall be required to report to any probation office as a result of such violation, nor shall any record of the case be entered in the probation records.

If any person so notified to appear before the clerk of a district court fails to pay the fine provided hereunder within the time specified or, having appeared, does not confess the offense before the clerk or pay the sum of money fixed as a penalty after a hearing and finding as provided in the preceding paragraph, the clerk shall notify the enforcing person who issued the original notice, who shall determine whether to apply for the issuance of a complaint for the violation of the appropriate ordinance, by-law, rule or regulation.

As used in this section the term "district court" shall include, within the limits of their jurisdiction, the municipal court of the city of Boston and the divisions of the housing court department of the trial court.

The notice to appear provided for herein shall be printed in such form as the chief justice of the municipal court of the city of Boston shall prescribe for said court, and as the chief justice of the district courts shall prescribe for the district courts. Said notice may also include notice of violations pursuant to section eleven C of chapter eighty-five, section eighteen A of chapter ninety, section one hundred and seventy-three A of chapter one hundred and forty and section sixteen A of chapter two hundred and seventy. Any fines imposed under the provisions of this section shall enure to the city or town for such use as said city or town may direct. This procedure shall not be used for the enforcement of municipal traffic rules and regulations. Chapter ninety C shall be the exclusive method of enforcement of municipal traffic rules and regulations.

Added by St.1977, c. 401, § 2. Amended by St.1987, c. 609, §§ 1, 2; St.1988, c. 199, § 8; St.1989, c. 649, § 1; St.1990, c. 470; St.1992, c. 133, § 370; St.1993, c. 182, § 4.

§ 21E. Municipal charges and bills; due dates; interest

Any city or town may, by ordinance or by-law, and any district by vote of the district meeting, establish due dates for the payment of municipal charges and bills, and may fix a rate at which interest shall accrue if such charges remain unpaid after such due dates; provided, however, that the rate of interest shall not exceed the rate at which interest may be charged on tax bills under the provisions of section fifty-seven of chapter fifty-nine.

Added by St.1988, c. 42, § 1.

§ 22. Regulation of vehicles; penalties for violation; disabled veterans and handicapped persons excepted from parking violations; taxicab licenses

Except as otherwise provided in section eighteen of chapter ninety and subject, so far as applicable, to section two of chapter eighty-five and sections eight and nine of chapter eighty-nine, a city or town may make ordinances or bylaws, or the board of aldermen or the selectmen or the town council may make rules and orders, for the regulation of carriages and vehicles used therein, and may set penalties for the violation thereof; and may set and receive an annual fee for each license granted to a person to use any such carriage or vehicle therein. No such rule or order shall prohibit the use of passenger or station wagon type motor vehicles whose gross weight is less than five thousand pounds and which are registered for commercial use, on ways, parkways or boulevards where non-commercial passenger-type motor vehicles are permitted to operate. Such rules and orders shall not take effect until they have been published at least once in a newspaper published in the city, town or county.

No penalty shall be imposed upon any disabled veteran or handicapped person, whose vehicle bears the distinctive number plates, or displays the special parking identification plate authorized by section two of chapter ninety or bears the official identification of a handicapped person issued by any other state, or any Canadian Province, for parking such vehicle on any way for a longer period of time than permitted by said ordinances, by-laws, rules or orders.

Except in the counties of Dukes and Nantucket every metered taxicab licensed under this section shall have the name or the trade name of the owner and the name of the city or town in which it is licensed painted on the sides thereof in letters not less than four inches high and one half inch wide.

Amended by St.1949, c. 644, § 1; St.1955, c. 458, § 1; St.1957, c. 417, § 1; St.1966, c. 273; St.1966, c. 566; St.1967, c. 86; St.1968, c. 694, § 1; St.1980, c. 329, § 73A; St.1985, c. 632, § 2; St.1986, c. 251, § 2.

Historical and Statutory Notes

St.1847, c. 224, §§ 1, 2.
St.1850, c. 275.
G.S.1860, c. 19, § 14.
P.S.1882, c. 28, § 25.
St.1885, c. 197.
R.L.1902, c. 25, § 24.
St.1920, c. 591, § 9.
St.1928, c. 357, § 6.

§ 22A. Parking meters; fees; exemption from fees for disabled veterans and handicapped persons; bicycle locking devices; motorcycle parking; restricted parking areas for veterans and handicapped persons

Any city or town, for the purpose of enforcing its ordinances, by-laws and orders, rules and regulations relating to the parking of vehicles on ways within its control and subject to the provisions of section two of chapter eighty-five, may appropriate money for the acquisition, installation, maintenance and operation of parking meters, or by vote of the city council or of the town may authorize a board or officer to enter into agreement for such acquisition, installation or maintenance of parking meters; provided, that the city of Boston, for the purpose of enforcing the rules and regulations adopted by its traffic and parking commission, or promulgated by its commissioner of traffic and parking, under chapter two hundred and sixty-three of the acts of nineteen hundred and twenty-nine, may appropriate money for the acquisition, installation, maintenance and operation of parking meters, or, by vote of the city council of said city, subject to the provisions of its charter, may authorize the traffic and parking commission of said city to enter into agreements for the acquisition, installation or maintenance of parking meters. An agreement for the acquisition or installation of parking meters may provide that payments thereunder shall be made over a period not exceeding five years without appropriation, from fees received for the use of such parking meters notwithstanding the provisions of section fifty-three of chapter forty-four. Such fees shall be established and charged at such rates that the revenue therefrom shall not exceed in the aggregate the neces-

sary expenses incurred by such city or town for the acquisition, installation, maintenance and operation of parking meters and the regulation of parking and other traffic activities incident thereto. No fee shall be exacted and no penalty shall be imposed for the parking of any vehicle owned and driven by a disabled veteran or by a handicapped person and bearing the distinctive number plates authorized by section two of chapter ninety, or for any vehicle transporting a handicapped person and displaying the special parking identification plate authorized by said section two of said chapter ninety or for any vehicle bearing the official identification of a handicapped person issued by any other state or any Canadian Province. Any city or town may, in accordance with the provisions of this section, acquire and operate coin-operated locking devices for bicycle parking. A city or town may, in accordance with the provisions of this section, authorize the parking of more than one motorcycle in a single parking space and may impose a penalty for the full amount of a violation of an ordinance, by-law, order, rule or regulation related to the parking of vehicles on ways within its control and subject to section 2 of chapter 85 for each motorcycle so parked in violation of any such ordinance, by-law, order, rule or regulation. No motorcycle shall be parked in such a manner so as to inhibit the means of egress of another motorcycle currently parked in the same parking space.

Any city or town acting under this section shall further regulate the parking of vehicles on ways within its said control by restricting certain areas thereon for the parking of any vehicle owned and driven by a disabled veteran or handicapped person whose vehicle bears the distinctive number plates authorized by section two of chapter ninety or for any vehicle transporting a handicapped person and displaying the special parking identification plate authorized by said section two of said chapter ninety, or for any vehicle bearing the official identification of a handicapped person issued by any other state, or any Canadian Province, or by prohibiting the parking or standing of any vehicles in such a manner as to obstruct any curb ramp designed for use by handicapped persons. Parking spaces designated as restricted under this paragraph shall be identified by the use of above-grade signs with white lettering against a blue background and shall bear the words "Handicapped Parking: Special Plate Required. Unauthorized Vehicles May be Removed at Owner's Expense". The spaces shall be as near as possible to a building entrance or walkway, shall be adjacent to curb ramps or other unobstructed methods permitting sidewalk access to a handicapped person and shall be at least 8 feet wide, not including the cross hatch access aisle as defined by the architectural access board established in section 13A of chapter 22. If parking spaces designated as restricted under this paragraph are made temporarily unavailable due to a construction project or other planned event, the city or town shall ensure that the nearest available nonreserved parking space, if any, shall be temporarily designated as restricted under this paragraph. The cost of acquisition, installation and maintenance and operation of any signs or other regulatory devices used to designate such restricted areas shall be considered as a necessary expense for the regulation of parking and shall be paid from appropriations authorized by this section. Any such ordinance, by-law, order, rule or regulation promulgated pursuant to this paragraph shall contain a penalty of not less than $100 nor more than $300 and shall provide for the removal of a vehicle in accordance with section 22D. This penalty shall not be a surchargeable offense under section 113B of chapter 175.

Added by St.1947, c. 442, § 1. Amended by St.1949, c. 644, § 2; St.1952, c. 592; St.1955, c. 458, § 2; St.1957, c. 417, §§ 2, 3; St.1962, c. 338, § 16; St.1973, c. 183, § 1; St.1977, c. 648; St.1979, c. 260; St.1981, c. 644, § 2; St.1985, c. 632, §§ 3, 4; St.1986, c. 251, §§ 3, 4; St.1987, c. 183; St.1990, c. 326, §§ 2, 3; St.1992, c. 133, § 371; St.2000, c. 90; St.2000, c. 384, § 10; St.2008, c. 76, § 3, eff. July 9, 2008.

§ 22B. Acquisition and maintenance of off-street parking areas; conditions; exceptions

Any city or town having installed parking meters or coin-operated locking devices for bicycle parking may acquire off-street parking areas and facilities by purchase, gift, eminent domain under chapter seventy-nine or chapter eighty A, by lease not to exceed five years, or otherwise, and may pay for such acquisition or lease, including the cost of policing, constructing or reconstructing, surfacing, operating and maintaining such areas and facilities, and including any debt together with interest thereon incurred for such acquisition, in whole or in part and pay for the removal of architectural barriers in public facilities in accordance with the provisions of section thirteen A of chapter twenty-two, from any receipts from said parking meters or such devices and may in each year transfer or pay into its general funds from said receipts a sum or

sums in lieu of taxes for the year in question upon the average assessed valuation of said areas and facilities for the three years immediately prior to the date of said acquisition, determined by multiplying each one thousand dollars of such average valuation or fraction thereof by the tax rate set for said city or town for that year; provided, that the off-street parking areas and facilities are located not more than six hundred feet from a building in which the principal activity is business, commercial, manufacturing or industrial in character, and which building is in a business, commercial, manufacturing or industrial zone, but is not more than six hundred feet from the nearest parking meter of any group of not less than thirty parking meters approved by the department of highways, or are located not more than six hundred feet from a public beach area.

Added by St.1949, c. 776. Amended by St.1953, c. 92; St.1959, c. 270; St.1964, c. 20; St.1964, c. 122; St.1973, c. 183, § 2; St.1977, c. 689; St.1981, c. 644, § 3; St.1987, c. 420; St.1991, c. 552, § 29.

§ 22C. Off-street parking lots; installation of parking meters and other devices

Any city or town, having installed parking meters or coin-operated locking devices for bicycle parking under the provisions of section twenty-two A, may install parking meters in municipally owned or leased off-street parking lots and other devices for controlling such off-street parking lots, and may use any receipts from parking meters and other devices so installed for the purpose of purchase or lease of additional parking lots, the care and maintenance of the same, and in general for any traffic control or traffic safety purposes, including payment for public liability coverage in connection with the use of said municipally owned or leased parking lots.

Added by St.1951, c. 326. Amended by St.1960, c. 449; St.1967, c. 38; St.1973, c. 183, § 3.

§ 22D. Vehicles parked in violation of law; removal

In a city or town which accepts this section, as hereinafter provided, the city council or board of selectmen, or if, in any city or town, some other board or commission is empowered to establish traffic regulations, such other board or commission, may adopt, amend, alter or repeal rules and regulations, with such limitations, if any, as may be deemed proper, authorizing the chief officer of the police department or such sergeants or other officers of higher rank in the police department as he may from time to time designate, to remove, to some convenient place through the agency of a person or persons in the employ of the police department or by an independent contractor selected in accordance with law, by-law, or ordinance, on the basis of competitive bids, any vehicle parked or standing on any part of any way under the control of the municipality in such a manner as to obstruct any curb ramp designed for use by handicapped persons as means of egress to a street or public way, or to occupy or obstruct any parking space reserved for a vehicle used by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate, or displays the special parking identification plate authorized by section two of chapter ninety, or bears the official identification of a handicapped person issued by any other state, or any Canadian Province, or to impede in any way the removal or plowing of snow or ice or in violation of any rule or regulation which prohibits the parking or standing of all vehicles on such ways or portions thereof at such time and recites that whoever violates it shall be liable to charges for the removal and storage of the vehicles as well as subject to punishment by fine. Vehicles owned by the commonwealth or a political subdivision thereof or by the United States or any instrumentality thereof or registered by a member of a foreign diplomatic corps or by a foreign consular officer who is not a citizen of the United States and bearing a distinctive number plate or otherwise conspicuously marked as so owned or registered, shall not, however, be subject to such removal. Regulations and such signs as may be necessary shall be subject to the provisions of section two of chapter eighty-five. Liability may be imposed for the reasonable cost of such removal, and for the storage charges, if any, resulting therefrom, upon the owner of such vehicle; provided, however, that the liability so imposed for removal shall not exceed the maximum rate established by the department of telecommunications and energy under authority of section six B of chapter one hundred and fifty-nine B, and that the liability so imposed for storage shall not exceed the maximum rate established under the provisions of section six B of chapter one hundred and fifty-nine B. Neither the removal nor storage of a vehicle under the provisions of this section shall be deemed to be services rendered or work performed by the municipality or the police department of such municipality. The contractor shall be liable to the owner of such vehicle for any damage caused to it arising

out of negligence in the course of such removal and storage. This section shall take effect in a city having a Plan D or Plan E charter by the affirmative vote of a majority of all the members of the city council, and, in the case of other cities by vote of the city council, subject to the provisions of the charter, and in a town by vote of a town meeting. Acceptance may be revoked in like manner at any time after the expiration of one year from the date of acceptance.

The provisions of this section shall not apply to the city of Boston.

Added by St.1961, c. 322. Amended by St.1968, c. 369; St.1971, c. 438; St.1981, c. 644, § 4; St.1982, c. 333, § 1; St.1985, c. 632, § 5; St.1986, c. 251, § 5; St.1989, c. 267, §§ 1, 2; St.1997, c. 164, § 63.

§ 22E. Lease of air space above structures and facilities

Whenever the board or officer having charge of a structure or facility owned by a city or town, and not within the limits of playgrounds or lands held for park, conservation or similar purposes whether acquired under general or special law and irrespective of the date of acquisition, determines that the whole or any part of the airspace above such structure or facility is not required for the purposes thereof, such board or officer shall publish once a week for at least three consecutive weeks in a newspaper of general circulation in such city or town an advertisement of such determination, identifying the structure or facility involved. Such advertisement shall invite sealed proposals for the leasing of such airspace for a term not exceeding ninety-nine years and for the construction of a building therein pursuant to basic drawings and outline specifications to be submitted with such proposal. Such advertisement shall also fix a time, not less than three months after the first publication of such advertisement, and specify a place, at which time and place such board or officer shall publicly open and read such sealed proposals.

Any provision of general or special law to the contrary notwithstanding, the city manager in the case of a city having a Plan D or Plan E charter, when authorized thereto by an affirmative vote of a majority of the city council, the mayor in the case of any other city, when authorized thereto by majority vote of the city council, and the selectmen in the case of a town, when authorized thereto by vote of the town at a town meeting, may lease, in accordance with whichever of the proposals so submitted is deemed most advantageous to such city or town, the whole or any part of the airspace determined as aforesaid to be not required for the purposes of such structure or facility and such parts of such structure or facility or the site thereof as may be necessary for structural supports and means of ingress and egress to and from the building to be erected in such airspace. Buildings and other things erected or affixed pursuant to the lease of any such airspace shall be taxed to the lessee thereof or his assigns in the same manner and to the same extent as if such lessee or his assigns were the owners of the land in fee and the value of the land shall be included in any such assessment.

Added by St.1962, c. 796. Amended by St.1963, c. 147; St.1969, c. 815, §§ 1, 2.

§ 22F. License fees; service charges; acceptance of section

Any municipal board or officer empowered to issue a license, permit, certificate, or to render a service or perform work for a person or class of persons, may, from time to time, fix reasonable fees for all such licenses, permits, or certificates issued pursuant to statutes or regulations wherein the entire proceeds of the fee remain with such issuing city or town, and may fix reasonable charges to be paid for any services rendered or work performed by the city or town or any department thereof, for any person or class of persons; provided, however, that in the case of a board or officer appointed by an elected board, the fixing of such fee shall be subject to the review and approval of such elected board.

A fee or charge imposed pursuant to this section shall supersede fees or charges already in effect, or any limitations on amounts placed thereon for the same service, work, license, permit or certificate; provided, however, that this section shall not supersede the provisions of sections 31 to 77, inclusive, of chapter 6A, chapter 80, chapter 83, chapter 138, sections 121 to 131N, inclusive, of chapter 140 or section 10A of chapter 148. The provisions of this section shall not apply to any certificate, service or work required by chapters fifty to fifty-six, inclusive, or by chapter sixty-six. The fee or charge being collected immediately prior to acceptance of this section for any license, permit, certificate service or work will be utilized until a new fee or charge is fixed under this section.

The provisions of this section may be accepted in a city by a vote of the city council, with the approval of the mayor if so required by law, and in a town

by vote of the town meeting, or by vote of the town council in towns with no town meeting.

Added by St.1991, c. 138, § 123. Amended by St.1995, c. 42; St. 1996, c. 454, § 1; St.1998, c. 180, § 3.

§ 22G. Funds received from fines for handicap parking violations; deposits in account; expenditures

Any city or town which has accepted the provisions of section eight J is hereby authorized to allocate all funds received from fines assessed for violations of handicap parking in said city or town to the commission on disabilities.

Funds so received shall be deposited by the city or town treasurer in a separate account and shall be used solely for the benefit of persons with disabilities. Said account shall be established by the city or town treasurer and shall be kept separate and apart from all other monies. Expenditures from said account, including accrued interest, if any, shall be made upon the recommendation of the commission on disabilities in accordance with the accepted procedures of the city or town for the disbursement of funds, including the approval of the mayor and city council or the town manager or board of selectmen. The city or town accountant shall submit annually a report of said account to the mayor and city council or the town manager and board of selectmen for review and a copy of said report shall be forwarded to the bureau of accounts.

Added by St.1992, c. 241.

§ 23. Powers of cities; regulation of erection and maintenance of balustrades; penalty for violation

A city council may make rules and regulations for the erection and maintenance of balustrades or other projections upon the roofs or sides of buildings therein, with penalties for the violation thereof of not more than twenty dollars for each offence; but no such rule or regulation shall take effect until sixty days after its publication in a newspaper published in the city or in the county where the city is situated.

Historical and Statutory Notes

St.1848, c. 278.
G.S.1860, c. 19, § 13.
P.S.1882, c. 28, § 24.
R.L.1902, c. 26, § 38.

§ 24. Powers of cities; regulation of the quality of ice; penalty for violation

A city may make ordinances to secure the inspection of ice sold therein and to prevent the sale of impure ice, and affix penalties of not more than twenty dollars for each violation thereof.

Historical and Statutory Notes

St.1895, c. 338.
R.L.1902, c. 26, § 18.

§§ 25 to 30B. Repealed, 1954, 368, Sec. 1

§ 31. Powers of towns; performance of duty imposed by by-laws

If a town by-law imposes a duty and affixes a penalty for the neglect or violation thereof, it may also provide that upon such neglect or violation the duty may be performed by officers therein named, at the expense of the person liable to perform the same; and such expense, to an amount not exceeding the penalty, may be recovered in contract by the town.

Historical and Statutory Notes

St.1855, c. 287.
G.S.1860, c. 18, § 13.
P.S.1882, c. 27, § 20.
R.L.1902, c. 25, § 25.

§ 32. Validation of by-laws; procedure

Except to the extent that a zoning by-law may take effect as provided in section five of chapter forty A, before a by-law takes effect it shall be approved by the attorney general or ninety days shall have elapsed without action by the attorney general after the clerk of the town in which a by-law has been adopted has submitted to the attorney general a certified copy of such by-law with a request for its approval, a statement clearly explaining the proposed by-law, including maps and plans if necessary, and adequate proof that all of the procedural requirements for the adoption of such by-law have been complied with. Such request and proof shall be submitted by the town clerk within thirty days after final adjournment of the town meeting at which such by-law was adopted. If the town clerk fails to so submit such request and proof within such thirty days, the selectmen, within fifteen days thereafter, may submit a certified copy of such by-law with a request for its approval, a statement explaining the proposed by-law, including maps and plans, if necessary, and adequate proof that all procedural requirements for the adoption of such by-law has been complied

with. If the attorney general does not, within said ninety days, request of such town clerk in writing further proof of such compliance stating specifically wherein such proof is inadequate, it shall be presumed that the proof submitted was adequate. If the attorney general disapproves a by-law he shall give notice to the town clerk of the town in which the by-law was adopted of his disapproval, with his reasons therefor. If a by-law of a town takes effect by reason of the failure of the attorney general to seasonably act upon a request for its approval, the clerk of such town shall enter in his records a statement that the by-law has become effective by reason of such failure of the attorney general to act. Before a by-law or an amendment thereto takes effect it shall also be published in a town bulletin or pamphlet, copies of which shall be posted in at least five public places in the town; and if the town is divided into precincts, copies shall be posted in one or more public places in each precinct of the town; or instead of such publishing in a town bulletin or pamphlet and such posting, copies thereof may be published at least twice at least one week apart in a newspaper of general circulation in the town. The publication of a zoning by-law shall include a statement that claims of invalidity by reason of any defect in the procedure of adoption or amendment may only be made within ninety days of such posting or of the second publication and a statement indicating where copies of such by-law may be examined and obtained. The requirements of publishing in a town bulletin or pamphlet and posting, or publishing in one or more newspapers, as above, may be dispensed with if notice of the by-laws is given by delivering a copy thereof at every occupied dwelling or apartment in the town, and affidavits of the persons delivering the said copies, filed with the town clerk, shall be conclusive evidence of proper notice hereunder. This section shall not apply to cities.

Notwithstanding the provisions of the preceding paragraph, if the attorney general finds there to be any defect in the procedure of adoption or amendment of any zoning by-law relating to form or content of the notice of the planning board hearing prescribed in section 5 of chapter 40A, or to the manner or dates on which said notice is mailed, posted or published as required by said section 5, then instead of disapproving the by-law or amendment because of any such defect, the attorney general may proceed under the provisions of this paragraph. If the attorney general so elects, written notice shall be sent to the town clerk within a reasonable time setting forth with specificity the procedural defect or defects found, including a form of notice thereof, whereupon the running of the 90-day period provided for the attorney general's review pursuant to this section shall be suspended. The town clerk shall forthwith post the notice in a conspicuous place in the town hall for a period of not less than 14 days, and shall publish it once in a newspaper of general circulation in the town. The notice shall state that any resident, the owner of any real property in the town, or any other party entitled to notice of the planning board hearing, who claims that any such defect was misleading or was otherwise prejudicial may, within 21 days of the publication, file with the town clerk a written notice so stating and setting forth the reasons supporting that claim. Forthwith after the expiration of said 21 days, the town clerk shall submit to the attorney general either (a) a certificate stating that no claim was filed within the 21 day period, or (b) a certificate stating that one or more claims were filed together with copies thereof. Upon receipt of the town clerk's certificate, the 90-day period provided for the attorney general's review pursuant to this section shall resume; but if the expiration of the 90-day period is less than ten days from the date on which the town clerk's certificate was received, then the review period shall be extended to the tenth day following such receipt. If no claim was made, the attorney general may waive any such defect; but, if any claim is made then the attorney general may not waive any such defect. However, by not filing a claim under this paragraph, a person shall not be deprived of the right to assert a claim of invalidity arising out of any possible defect in the procedure of adoption or amendment as provided in this section and in section 5 of chapter 40A.

Notwithstanding the provisions of the first paragraph of this section, the attorney general and the town counsel may, by an agreement in writing setting forth the reasons therefor and filed with the town clerk before the end of the 90-day period, extend the 90-day period provided for the attorney general's review pursuant to this section for not more than an additional 90 days.

Amended by St.1933, c. 185, § 1; St.1941, c. 520, § 1; St.1952, c. 337; St.1967, c. 97; St.1967, c. 308; St.1975, c. 808, § 1; St.1981, c. 38; St.2000, c. 299.

Historical and Statutory Notes

St.1692–3, c. 28, § 5.
St.1695–6, c. 9, § 5.
St.1785, c. 75, § 7.

R.S.1836, c. 15, §§ 13, 15.
St.1847, c. 166.
St.1855, c. 222, §§ 1, 2.
St.1857, c. 82.
G.S.1860, c. 18, §§ 14, 16.
P.S.1882, c. 21, §§ 21, 23.
R.L.1902, c. 25, § 26.
St.1904, c. 344, §§ 1, 2.
St.1905, c. 144.
St.1919, c. 275.

§ 32A. Publication of ordinances

The provisions in the charter of a city which accepts this section by vote of its city council, requiring newspaper advertising of certain ordinances and proposed ordinances shall, in case of any ordinance or proposed ordinance, or codification thereof, exceeding in length eight octavo pages of ordinary book print, be deemed to be complied with if the same is published by the city council in a municipal bulletin or printed pamphlet, but otherwise in conformity with said provisions, except for zoning ordinances or amendments thereto, a summary of which shall be published at least two times in a newspaper of general circulation in the city. The publication of such zoning summaries shall include a statement indicating where copies of the ordinance may be examined and obtained and a statement that claims of invalidity by reason of any defect in the procedure of adoption may only be made within ninety days after the posting or the second publication.

Amended by St.1975, c. 808, § 2.

Historical and Statutory Notes

St.1929, c. 369.

§ 32B. Publication of compilations of zoning ordinances; supplements; distribution and sale

A city or town may from time to time publish, distribute or sell compilations of zoning ordinances or by-laws and amendments thereto, certified by the city or town clerk, and effective as of a specified date. The compilations and supplements thereto may include zoning maps and subdivision control, public health, safety and other land use control and environmental quality laws, ordinances, by-laws, regulations, rules, and orders, notices of hearings on proposed and pending amendments which, if adopted, would affect construction begun after the notice of hearing, and claims of invalidity of ordinances or by-laws filed with the clerk, all in such manner as to permit public officials, owners, purchasers, mortgagees of property and others to ascertain the zoning pending or applicable to property at any time.

Zoning maps may, in addition to showing boundaries, also identify historic or architectural districts for which special certificates or permits may be required, certified historical landmarks or places, land publicly owned, designated as wetlands or subject to wetlands regulations, land subject to conservation or preservation restrictions under chapter one hundred and eighty-four, and other land use or environmental quality control information.

The city or town clerk may arrange for the distribution of such compilations and supplements thereto to city, town, county, regional and state public offices, and for the public sale of such compilations and supplements thereto at appropriate places, at a price not to exceed the estimated cost of preparation, publication, distribution and sale. The director of housing and community development and registers of deeds may assist the clerk in such distribution. Said director may suggest guidelines for such compilations and supplements thereto, procedures for verifying the text of zoning enactments and the accuracy of zoning maps, require a copy of each zoning compilation, supplement and map, and may also assist in the preparation, publication, distribution and sale of such compilations and supplements thereto.

Added by St.1973, c. 602, § 1. Amended by St.1998, c. 161, § 252.

§ 33. Rules and regulations promulgated by town boards; filing

A copy of all rules and regulations made by town boards or officers for which a penalty is provided by law shall be filed with town clerk within ten days after they take effect.

Historical and Statutory Notes

St.1920, c. 591, § 4.

§ 34. Town; erection and maintenance of lockup; penalty for noncompliance

Each town containing more than five thousand inhabitants shall, and any town may, maintain a secure and convenient lockup to which persons arrested without a warrant may be committed; and a magistrate may commit, for further examination, a prisoner charged with a bailable offence and not recognizing, to the lockup in the town where the prisoner was arrested or to the lockup in a town where the court is held, if he considers it safe and

commodious and that expense may be saved thereby. If a town neglects to provide and maintain a lockup as herein required, it shall forfeit ten dollars for each month during which such neglect continues.

For the purposes of this section, the word "maintain" shall include the provision of any prescribed medication and nutritionally adequate meals to a person committed to such lockup. Compliance with this section shall be enforced pursuant to section twenty-one of chapter one hundred and eleven.

Amended by St.1985, c. 240; St.1989, c. 493.

Historical and Statutory Notes

St.1862, c. 216, § 16.
St.1873, c. 175, § 3.
St.1876, c. 159, § 1.
P.S.1882, c. 27, §§ 32, 35.
R.L.1902, c. 25, §§ 39, 42.
St.1918, c. 291, § 5.

§ 35. Keeper; appointment; oath; penalty for failure to appoint keeper

The mayor of each city, except Boston, and in Boston the police commissioner, and the selectmen of each town required to maintain a lockup shall annually, by a writing recorded with the town clerk, appoint a keeper of the lockup, who shall have the care and custody thereof and of persons committed thereto. He shall accept the appointment within three days after notice thereof, shall be sworn and shall hold office for one year unless sooner removed. If the selectmen neglect to appoint a keeper, each selectman shall forfeit ten dollars for each month during which such neglect continues; and if the mayor, except in Boston, or in Boston the police commissioner, neglects for three months to appoint a keeper, he shall forfeit thirty dollars and ten dollars additional for each subsequent month of such neglect.

Historical and Statutory Notes

St.1873, c. 175, §§ 1, 3.
St.1881, c. 136, § 7.
P.S.1882, c. 27, §§ 33, 35; c. 28, § 27.
St.1885, c. 323, § 2.
R.L.1902, c. 25, §§ 40, 42; c. 26, § 40.
St.1906, c. 291, § 10.

§ 36. Keeper; powers; compensation; fees

Such keeper shall have the power of a police officer and shall receive the compensation to be fixed by the selectmen upon his appointment. For the expenses of detention and support of each person committed, shown by the officer's return to have been actually detained in the lockup, there may be charged upon the precept, if any, and paid to the town, not more than fifty dollars for each day or fraction thereof.

Amended by St.1956, c. 176; St.1971, c. 81; St.1987, c. 209.

Historical and Statutory Notes

St.1862, c. 216, § 17.
St.1873, c. 175, § 2.
St.1876, c. 159, § 2.
St.1881, c. 69.
P.S.1882, c. 27, § 34.
St.1890, c. 166.
R.L.1902, c. 25, § 41.

§ 36A. Report of death or suicide of lockup inmates; records of attempts at, or threats of, suicide

Whenever a person is in police custody and commits suicide or dies at a lockup facility established pursuant to the provisions of section thirty-four of chapter forty, or under the jurisdiction of the metropolitan police, or whenever a person in police custody inflicts self-injury at a lockup facility which subsequently results in his death, the officer in charge of the lockup facility shall make a report of such incident, identifying the deceased and describing the circumstances of such death. One copy of said report shall be sent, within seven days of such death, together with copies of any incident pertaining thereto to the medical examiner's office in the county wherein such incident occurred, and one copy of said report shall be retained in the lockup files. Said report shall be in addition to the requirement of notification pursuant to section six of chapter thirty-eight.

Upon receipt for said reports, the medical examiner may send a copy, together with a copy of each incident report, autopsy reports and medical examiner's reports, upon request, to the next of kin of the deceased person. Upon request for said reports by the next of kin of the deceased, the medical examiner shall furnish said reports within fourteen days of the request. If an autopsy is performed, the next of kin may have a physician of his own choice present. The next of kin may waive this right in writing, or, if next of kin fails to designate a physician within forty-eight hours of the death, the right will be considered waived.

Whenever a person in police custody attempts or threatens suicide at a lockup facility, the officer in charge of the lockup shall, within twenty-four hours of such incident, record in the department of criminal justice information services computer the name, address, and the age of such person, the

charge or reason for such detention and the nature and date of said attempt or threat. Such information shall be made part of the criminal offender record information system. It shall be disseminated only to those agencies and offices authorized under section one hundred and seventy-two of chapter six.

Whenever a person in police custody attempts or threatens suicide at a lockup facility and said person is transferred to another lockup facility, the officer in charge shall notify in writing the receiving lockup facility of the exact nature of said attempt or threat.

Added by St.1984, c. 456, § 1. Amended by St.1996, c. 151, § 189; St.2010, c. 256, § 57, eff. Nov. 4, 2010.

§ 36B. Cells; protective coverings, electronic audio systems and electronic security devices

Each cell utilized for the detention of persons within a city, town, or state lockup facility which is under the jurisdiction of a local police department or the state police shall have a protective covering of high-impact, transparent wall facing. Such protective covering shall cover all bar structures accessible to such detained persons. Adequate ventilation shall be provided to persons detained in the cell.

At least one such cell within such lockup facility shall have installed within it, but beyond the access of any person detained within such cell, an electronic audio system whereby a police officer or other lockup personnel at the duty desk within such lockup facility is brought within audible range of such cell; provided, however, that no such electronic audio system is required to be installed if at least one such cell within such lockup facility is within audible range of the duty desk without electronic assistance.

Each occupied cell within such a lockup facility should be physically or visibly checked by a law enforcement officer or other lockup personnel as often as is required by a reasonable standard of care of detainees.

Every lockup facility shall have installed within the cell area an electronic security device which will record the date and time of day of each cell check made by a law enforcement officer or other lockup personnel. All checks made shall be recorded on such electronic security device.

Added by St.1984, c. 456, § 1. Amended by St.1985, c. 208, § 1; St.1987, c. 303, § 38; St.1991, c. 412, § 46; St.1992, c. 286, § 115.

§ 36C. Police; training in suicide detection, intervention and prevention

All members of municipal police departments, and all uniformed members of the state police shall be trained in the detection, intervention and prevention of suicide. Said training shall include training in the nature and symptomatology of suicide, training in communicating with suicidal detainees, and training in appropriate suicide prevention techniques and emergency procedures. Said training shall be approved and coordinated by the municipal police training committee, and shall be included in the curriculum of all police training schools and academies, including the state police academy.

In-service training shall be provided for police officers having previous basic recruit training. Shift commanders shall complete such training within one year of the passage of this act, and all other officers shall complete such training within three years of the passage of this act. Completion of a refresher seminar in suicide prevention shall be a condition of promotion for all police officers affected by the provisions of this act.

All lockup facilities established pursuant to section thirty-four of chapter forty, or under the jurisdiction of the state police, shall establish written procedures to be followed in any situation which threatens or may threaten the safety of persons detained therein.

Added by St.1984, c. 456, § 1. Amended by St.1991, c. 412, §§ 47, 47C; St.2002, c. 196, § 16.

§ 37. Accessibility of lockup to police; penalty for refusing access

Such lockups shall at all reasonable hours be accessible to the state police, sheriffs, constables and police officers for any legal and proper use; and a keeper thereof neglecting to keep it so accessible, or refusing to said officers the use of the same, shall be punished by a fine of not less than five nor more than twenty dollars.

Historical and Statutory Notes

St.1873, c. 175, § 4.
St.1879, c. 305, § 2.
P.S.1882, c. 27, § 36.
R.L.1902, c. 25, § 43.

§ 37A. Curfews; imposition; penalties

The mayor of any city other than a city having a Plan D or Plan E form of charter, the city manager of a city having a Plan D or Plan E charter, and the

selectmen of a town, hereinafter called the city or town official, may, if satisfied that a riot or other form of civil disorder is occurring or there is a danger that it may occur, and that a curfew is necessary for the public safety in such city or town, impose a curfew in all or part or parts of such city or town. Such curfew shall be imposed by a formal proclamation of the existence or threat of riot or other form of civil disturbance in the city or town and the need of a curfew to protect the public safety. Said proclamation shall be in writing and shall set forth all the conditions of such curfew. No curfew shall take effect until two hours after the issuance of the proclamation declaring the imposition of such curfew.

Such curfew may restrict or prohibit the movement or presence of persons, vehicles and animals in or on public ways and places, including areas to which the public has a right of access, and also places of amusement and entertainment, vacant lots and other open areas, provided that reasonable exceptions are made for all persons having business of an emergency nature which requires the use of public ways. When such curfew is imposed, the city or town official shall immediately use all reasonable and practicable means to inform all persons in such city or town of such curfew and its conditions, such as by the conspicuous posting of notices in public places, announcement by sound-powered voice or other such device, publication in newspapers of general circulation in such city or town and announcement over radio and television stations serving such city or town. While such curfew is in effect, its terms may be modified in any manner not inconsistent with this action by proclamation of said officials; provided, that two hours advance notice shall be given and that such modifications are publicized in the manner required in this section.

The city council or the town meeting, as the case may be, shall have the authority to revoke or modify and such curfew. Any curfew imposed by a city or town official under this section shall, unless sooner terminated by proclamation of said city or town official or by action of the city council or the town meeting or by the governor as hereinafter provided, terminate seventy-two hours from the hour it takes effect. Upon the termination of such curfew, additional curfews may be imposed in accordance with the provisions of this section.

The governor, acting under chapter six hundred and thirty-nine of the acts of nineteen hundred and fifty, as amended, or any other law granting him special powers during periods of emergency, may modify or revoke any curfew imposed under this section.

Any person knowing or having reason to know of such curfew who violates any conditions thereof shall be punished by imprisonment for not more than six months or a fine of not more than five hundred dollars, or both. Such person may be arrested without a warrant and kept in custody for not more than twenty-four hours, Sundays and holidays excepted, at or before the expiration of which time he shall be taken before a proper court or magistrate and proceeded against according to law.

Nothing in this section shall be construed to limit or supersede the power of cities and towns to impose curfews by appropriate ordinances or by-laws.

Added by St.1968, c. 563.

§ 38. Purchase, development and use of public water supply

A city, by a two thirds vote of its city council, ratified by a majority of the voters thereof at an election called for the purpose, or a town, by action of its selectmen, ratified by a majority of its voters present and voting thereon at a town meeting at which the voting list shall be used, may, for the purpose of supplying water to itself and its inhabitants, purchase of any municipal or other corporation the right to take water from its sources of supply or from its pipes; or may purchase its whole water rights, estates, franchises and privileges, and thereby become entitled to all its rights and privileges and subject to all its duties and liabilities; or, by its board of water commissioners or officers performing like duties, may contract with any such corporation for a supply of water. Any municipal corporation, by its water department, may make such a sale or enter into such a contract to supply water to a city or town.

A city or town having a water supply or water distributing system may develop and use any source of water supply within its limits, not already appropriated for purposes of public water supply, and for such purpose may proceed under any laws applicable to such system as though the authority granted hereby had been contained in such laws; provided, that no source of water supply and no lands necessary for protecting and preserving the purity of the water shall be taken or used without

first obtaining the advice and approval of the department of environmental protection.

Nothing in this section shall be construed as authorizing any city, town, or political subdivision which derives any part of its water supply from the Massachusetts Water Resources Authority, except in case of emergency, to use for water in contravention of any provision of the Massachusetts Water Resources Authority Act, and no such city, town, political subdivision nor any water company therein shall purchase water, except in case of emergency, from any municipality without written permission to do so by the said Authority.

Amended by St.1938, c. 172, § 2; St.1941, c. 465, § 1; St.1975, c. 706, § 90; St.1984, c. 372, § 35; St.1990, c. 177, § 99.

Historical and Statutory Notes

St.1870, c. 93, §§ 1, 5.
St.1873, c. 255.
P.S.1882, c. 27, §§ 27, 31; c. 28, § 3.
R.L.1902, c. 25, §§ 31, 34; c. 26, § 5.

§ 39. Conveying water through another town; liability for damages

If the water is conveyed through another town, pipes may be laid through any public ways therein which the board of aldermen or selectmen thereof may designate; and the town laying such pipes shall be liable for damages caused thereby.

Historical and Statutory Notes

St.1870, c. 93, § 4.
P.S.1882, c. 27, § 30.
R.L.1902, c. 25, § 33.

§ 39A. Water supply or distributing system; establishment; maintenance and operation; exception

A town, by a majority of its voters present and voting thereon at a town meeting at which the voting list shall be used, may establish a water supply or water distributing system and maintain and operate the same, in accordance with sections thirty-nine B to thirty-nine G, inclusive; but no such system shall be established to supply water in any town while the inhabitants of any part thereof are being served directly by a water company or a water supply district, water district, or fire district supplying water to its inhabitants, except in accordance with section thirty-eight or with special law. Any town may vote to authorize its board of selectmen to act as water commissioners, with all the powers and duties of such commissioners, until water commissioners shall be elected as hereinafter provided. A town which has so voted may, at an annual town meeting, or at a special town meeting called for the purpose and held at least thirty days before the next annual town meeting, vote that at such next annual town meeting water commissioners shall be elected.

Added by St.1938, c. 172, § 3. Amended by St.1941, c. 465, § 2.

§ 39B. Acquisition of land and water; conditions

For the purpose of establishing a water supply or water distributing system as authorized by section thirty-nine A, any town, by its board of water commissioners or selectmen authorized to act as such, may take by eminent domain under chapter seventy-nine, or acquire by purchase or otherwise, and hold, the waters, or any portion thereof, of any pond, brook, spring, stream or ground water sources within its limits, not already appropriated for purposes of public water supply, and any water or flowage rights connected therewith; and also for said purpose may take by eminent domain under chapter seventy-nine, or acquire by purchase or otherwise, and hold, all lands, rights of way and other easements necessary for collecting, storing, holding, purifying and treating such water and protecting and preserving the purity thereof and for conveying the same to any part of the town; provided, that no source of water supply and no lands necessary for protecting and preserving the purity of the water shall be taken or used without first obtaining the advice and approval of the department of environmental protection, and that the location and arrangement of all dams, reservoirs, wells or filter galleries, filtration and pumping plants or other works necessary in carrying out the provisions of sections thirty-nine A to thirty-nine E, inclusive, shall be subject to the approval of said department.

Added by St.1938, c. 172, § 3. Amended by St.1975, c. 706, § 91; St.1990, c. 177, § 100.

§ 39C. Construction and maintenance of dams, wells, reservoirs and other buildings; conditions

A town may construct and maintain on the lands acquired and held by it under section thirty-nine B proper dams, wells, reservoirs, pumping and filtration plants, buildings, standpipes, tanks, fixtures and other structures, including also purification and treatment works, the construction and maintenance of which shall be subject to the approval of

the department of environmental protection, and may make excavations, procure and operate machinery, and provide such other means and appliances and do such other things as may be necessary for the establishment and maintenance of complete and effective water works; and for that purpose may construct, lay and maintain aqueducts, conduits, pipes and other works, under or over any lands, water courses, railroads, railways and public or other ways, and along any such way in said town in such manner as not unnecessarily to obstruct the same; and for the purposes of constructing, laying, maintaining, operating and repairing such conduits, pipes and other works, and for all other proper purposes of sections thirty-nine A to thirty-nine E, inclusive, a town may dig up or raise and embank any such lands, highways or other ways in such manner as to cause the least hindrance to public travel thereon; provided, that all things done upon any such way shall be subject to the direction of the selectmen of the town or, in the case of a state highway, of the state department of highways; and provided, further, that no such town shall enter upon, or construct or lay any conduits, pipes or other works within, the location of any railroad corporation except at such time and in such manner as it may agree upon with such corporation or, in case of failure so to agree, as may be approved by the department of telecommunications and energy.

Added by St.1938, c. 172, § 3. Amended by St.1975, c. 706, § 92; St.1990, c. 177, § 101; St.1991, c. 552, § 30; St.1997, c. 164, § 64.

§ 39D. Surveys

Such a town may enter upon any lands for the purpose of making surveys, test pits and borings, and may take or otherwise acquire the right to occupy temporarily any lands necessary for the construction of any work or for any other purpose authorized by said sections thirty-nine A to thirty-nine E, inclusive.

Added by St.1938, c. 172, § 3.

§ 39E. Management of water system

The land, water rights and other property taken or acquired under section thirty-nine B, and all works, buildings and other structures erected or constructed under sections thirty-nine C and thirty-nine D, shall be managed, improved and controlled by a board of water commissioners to be elected as provided by section sixty-nine A of chapter forty-one, or by its selectmen authorized to act as such, in such manner as they shall deem for the best interests of the town.

Added by St.1938, c. 172, § 3.

§ 39F. Damages

Any person or corporation injured in his or its property by any action of a town under said sections thirty-nine A to thirty-nine E, inclusive, may recover damages from said town under chapter seventy-nine.

Added by St.1938, c. 172, § 3.

§ 39G. Pollution of water; damage to property; penalties

Whoever wilfully or wantonly corrupts, pollutes or diverts any of the waters taken or held under said sections thirty-nine A to thirty-nine E, inclusive, or injures any structure, work or other property owned, held or used by a town under the authority and for the purposes of said sections, shall forfeit and pay to said town three times the amount of damages assessed therefor, to be recovered in an action of tort; and upon conviction of any one of the above wilful or wanton acts shall be punished by a fine of not more than three hundred dollars or by imprisonment for not more than one year, or both.

Added by St.1938, c. 172, § 3.

§ 39H. Right to aid other governmental units; compensation

A city, town, commission or district through its water department, if any, if thereunto authorized by ordinance, or by-law or by vote of its governing body if a commission or district or a water company, as defined in section one of chapter one hundred and sixty-five, may make contracts with, or may go to aid any other city, town, commission, district or any other water company, as so defined, with regard to the operation, administration, repair and maintenance of its water supply system. Any such ordinance, by-law or vote may authorize the head of the department in charge of sewers and drains to enter into contracts or to extend such aid subject to such conditions and restrictions as may be prescribed therein. Members of such departments of cities, towns, commissions or districts while in the performance of their duties under such contracts or in extending such aid shall have the same immunities and privileges as if performing the same work in their respective cities, towns, commissions, and districts. Any city, town, com-

mission, district or water company aided under this section shall compensate any city, town, commission, district or water company rendering aid as aforesaid, for such aid and for the whole or any part of any damage to its property sustained in the course of rendering such aid. Any contracts under this section may be for a period not exceeding twenty years.

Added by St.1943, c. 125. Amended by St.1992, c. 343, § 1; St.1995, c. 38, § 58.

§ 39*I*. Water meters; testing

Any person using water supplied by a city, town or district, measured by a meter, shall be entitled to an examination and test of such meter to determine the accuracy of the same in any quarter or period, upon written application therefor, which shall be made before the expiration of the time when the rate for such quarter or period is required to be paid, to the board, commissioner or officer in charge of the water works of the city, town or district. Such examination and test shall be made by a competent person employed by the city, town or district. A written report of the result of the examination and test shall be furnished to the person making the application, and if it appears that the meter has registered with substantial accuracy, the expense of the examination and test shall be paid by the person applying therefor, and in no case shall the expense so required to be paid exceed three dollars for each examination and test, but if it appears that the meter has not registered within two per cent of accuracy and that the person has been charged with, or has paid for, more water than he should have been charged with or should have paid for, the amount of such excess shall forthwith be credited to such person or remitted to him if he has paid the same, and the expense of the examination and test shall be borne by the city, town or district supplying the water; if, however, it appears that the person has been charged with, or has paid for, less water than he should have been charged with or should have paid for, he shall forthwith be charged with the proper additional amount and shall pay the same, together with the expense of the examination and test, to the city, town or district supplying the water.

Added by St.1958, c. 527, § 1.

§ 39J. Pricing system; costs

In any city or town which accepts the provisions of this section, either by a vote of the city council, board of selectmen, board of water commissioners, or by vote of said city or town in a general election or town meeting, said city or town shall for the purposes of water conservation, water resource management, water resource planning and comprehensive financial management, adopt a pricing system which includes the costs of the provision of water and sewer services to the residents and industrial and commercial users of said city or town receiving said services. The definition of costs as used in this section shall include, but not be limited to, costs of pipe and related appurtenances, replacement stock for water and sewer, costs relating to the replacement and repair thereof including street work, maintenance of all equipment and related appurtenances necessary for the provision of water or the removal of wastewater services, all costs relating to the metering of water, all related costs of police and fire protection, all administrative costs relating to the collection of said water and sewer fees, all costs of chemicals relating to the treatment of water and wastewater, all costs relating to the personnel of the departments, as well as any long term planning costs for the continued provision of said services, and any costs of land acquisition relating to long range planning and future water supply development or wastewater treatment facilities.

Added by St.1985, c. 275, § 1.

§ 39J½. Repealed, 1990, 177, Secs. 102, 103

§ 39K. Drinking water protection district; establishment; commission; pricing system; fund

(a) Any city or town which accepts the provisions of this section either by a majority vote of the city or town council or by majority vote at an annual town meeting, may establish a drinking water protection district in conjunction with at least one other city or town sharing a common drinking water resource, including but not limited to an aquifer, a recharge area or a watershed. Said drinking water protection district shall be for the purposes of water conservation, resource management and protection, and resource planning of drinking water supplies in said district including public wells, reservoirs and aquifers which are affected by more than one such city or town.

The drinking water protection commission shall be composed of two members from each municipality in said district to be appointed by the mayor of a city or the board of selectmen of a town for a term of three years.

Each city or town in said district shall adopt a pricing system which charges all users of public or private water supplies within said city or town for protection of water resources. Said pricing system shall not impose a charge in excess of ten percent of the annual cost of water as charged by metered service or fixed rate. If service is without meters or if the water supply is private, a flat fee may be charged; provided, however, that such flat fee shall not exceed ten percent of the average annualized residential or commercial metered use whichever is applicable in such city or town; and provided, further, that in a city or town without a public water system a flat fee to be established by a majority vote of an annual town meeting, town council or city council, whichever is applicable shall be charged.

Such charges or fees collected under the provisions of this section shall be forwarded to the drinking water protection commission which shall deposit the same in the Drinking Water Protection Fund established under subsection (b).

(b) There is hereby established in each drinking water protection district a Drinking Water Protection Fund, hereinafter called fund, to be administered by the drinking water protection commission in each such district.

Said drinking water protection commission shall be eligible to apply for state funding available to a city or town. Upon receipt, such funds shall be deposited in the fund. Contributions, whether public or private, shall also be deposited in the fund for the purposes set forth herein.

Commission members shall serve without compensation. The commission shall elect a chairperson and such officers as it may by rule provide, and may make by majority vote such other rules and regulations consistent with the provisions of this section. The commission may, by majority vote of its members, hire such staff as is necessary to further the purposes of the commission.

A commission may issue bonds as provided herein. The chairperson of any such commission is hereby authorized and empowered in connection with any borrowing under this section to enter into one or more trust or security agreements between such commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the commonwealth, or directly between such commission and the lenders on the debt obligations, necessary to effectuate and to secure such borrowing. Such agreements may pledge or assign, and create a security interest in, in whole or in part, the revenues and other money held or to be received by the commission from any project being financed or from any fees or charges imposed by such commission relating to the powers of commissions as provided in subsection (c), whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the commission and the proceeds thereof. Such agreements may contain provisions for protecting and enforcing the rights, security and remedies of the holders of such debt obligations, including without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event thereof, which may include the acceleration of maturities and covenants setting forth the duties of, and limitations on, the commission in relation to the functioning of the project being financed by such debt obligations, the custody, safeguarding, investment and application of money, the issuance of additional debt obligations, the fixing, revision and collection of fees or other charges relating to water supply protection, the use of any surplus proceeds of the borrowing, including any investment earnings thereon, the establishment of special funds and reserves and the making and amending of contracts relating to such project.

The pledge on any such agreement shall be valid and binding and shall be deemed continuously perfected for the purposes of chapter one hundred and six and any other law from the time when the pledge is made and shall be supported by the full faith and credit of member municipalities. The revenues, money, rights and proceeds so pledged and then held or thereafter acquired or received without any physical delivery or segregation thereof or further act, and the lien of any such pledge, shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the commission, irrespective of whether such parties have notice thereof. No document by which a pledge is created need be filed or recorded except in the records of a city or town and no filing need be made under the provisions of said chapter one hundred and six.

Any such trust agreement may provide that any money received thereunder may be deposited or invested, pending the disbursement thereof, in any deposits or investments which are lawful for the funds of cities or towns pursuant to section fifty-five of chapter forty-four, and shall provide that any officer with whom or any bank or trust compa-

ny with such money shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof and thereof, subject to such regulation or limitation as this section or such agreement may provide.

It shall be lawful for any bank or trust company to act as depository or trustee of the proceeds of debt obligations, revenues or other money pledged under any such agreement and to furnish such indemnifying bonds or to pledge such security and issue such letters or lines of credit or other credit facilities as may be required by the commission. Any agreement entered into pursuant to this section may set forth the rights and remedies of the holders of any debt obligations and of the trustee and may restrict the individual right of action by any such holders. In addition to the foregoing, any such agreement may contain such other provisions as the commission may deem reasonable and proper. All expenses incurred in carrying out the provisions of such agreement may be treated as a cost of issuance hereunder. In addition to the foregoing, any such agreement may contain such other provisions as the commission may deem reasonable and proper. All expenses incurred in carrying out the provisions of such agreement may be treated as a cost of issuance thereunder. In addition to other security provided by a commission, such debt obligations may be secured, in whole or in part, by insurance or by letters or lines of credit or other credit or other credit facilities issued to the commission by any bank, trust company or other financial institution, within or without the commonwealth, and the commission may pledge or assign any of its revenues and other money held or to be received by the commission from the project being financed or from any fees or charges imposed by such commission relating to water supply protection as security for the reimbursement by the commission to the issuers of such letters of credit, insurance or credit facilities of any payments made thereunder.

Any holder of a debt obligation issued by a commission under the provisions of this section or of any of the coupons appertaining thereto or any trustee under an agreement securing the same, except to the extent the rights herein given may be restricted by such agreement, may bring suit upon the debt obligations or coupons and may, either at law or in equity, by suit, action, mandamus, or other proceeding for legal or equitable relief, including proceedings for the appointment of a receiver to take possession and control of the facilities financed by such debt obligations to operate and maintain the same, to make any necessary repairs, renewals and replacements in respect thereof and to fix, revise and collect fees and charges, protect and enforce any and all rights under the laws of the commonwealth or granted hereunder or under such agreement or other agreement, and may enforce and compel the performance of all duties required by this section or by such agreements to be performed by the commission by any officer thereof.

A pledge of revenue in accordance with the provisions of this section shall constitute a sufficient appropriation thereof for the purposes of any provision for appropriation for so long as such pledge shall be in effect and, notwithstanding any other general or special law to the contrary, such revenues may be applied as required by the pledge and the agreement evidencing the same without further appropriation. Prior to issuing bonds, said commission shall obtain appropriate bonding authorization from a majority of member municipalities.

No appointments shall be made and no money expended hereunder except by the affirmative vote of a majority of the members of said commission. The commission shall maintain accurate records of its meetings, actions and financial transactions and shall file an annual report which shall be printed in the annual report of each member town. The commission shall prepare an annual budget which shall be subject to approval by a majority of the members of said commission. The provisions of chapter forty-four, not inconsistent with the provisions of this section, shall apply to a drinking water protection district.

(c) The commission shall, subject to the provisions of this section have the power and authority to:

(1) assist municipalities in identification and protection of recharge and watershed areas for existing water supplies and locate and identify future drinking water supplies;

(2) assist municipalities by providing technical assistance for long-term planning to design and propose regional land use management efforts of drinking water resources that cut across town or water district boundaries;

(3) provide funds to assist municipal efforts to acquire land in fee simple, through easements, restrictions or other interests, buy development

rights, or manage lands identified as important to drinking water resource supply and protection;

(4) provide for public education regarding water conservation, proper waste disposal and land use in recharge or watershed areas;

(5) supplement local emergency response systems in cooperation with the department of environmental protection incidence response division, which teams shall be available to respond and assist where hazardous waste or chemical spills occur within a recharge or watershed area;

(6) coordinate, educate and disseminate information to the public regarding state and federal programs and monies available for drinking water resource projects;

(7) review and comment on proposed land use which may have an impact on resources of concern to the commission; and

(8) make available to private property owners grants for the removal of underground storage tanks considered by said commission to be a threat to the drinking water resource.

The commission shall not have authority to buy, sell or hold title to land, nor to take property by eminent domain, but may allocate funds to a member town with the stipulation that such funds be applied to the purchase of a specific parcel of land or development rights for a specific parcel of land by the member town to be used only for purposes consistent with the provisions of this section.

A city, by majority vote of city council, or a town, by majority vote at an annual town meeting or town council, may cease to be a member of said district subject to said city or town's share of bonding obligations incurred prior to such vote to withdraw. Said vote shall become effective six months after being certified by the city or town clerk and all funds collected prior to the effective date of withdrawal shall remain the property of the drinking water protection commission; provided, however that in the event that such withdrawal reduces commission membership to less than two municipalities, all funds collected prior to the date of dissolution not necessary to pay all existing obligations of the commission shall revert to the member municipalities on a pro rata basis to be used only for purposes consistent with the protection and enhancement of water supplies.

Added by St.1989, c. 361. Renumbered by St.1990, c. 177, § 102. Amended by St.1992, c. 286, § 116.

§ 39L. Water or sewer service charges; descending unit rate basis

No local body shall charge for water or sewer services on a descending unit rate basis. For the purposes of this section a local body shall be a city, town, district, commission or other political subdivision or instrumentality of the commonwealth which is not within Hampden county and which is responsible for providing by itself or through an officer, board, department or division thereof local water supply or local sewer services; except as otherwise expressly provided herein, in any case where local water supply or local sewer services within the territorial boundaries of a local body are provided in whole or in part by a political subdivision or public instrumentality of the commonwealth separate from such local body, the term "local body" as used in this section shall mean, within the service area thereof, the political subdivision or public instrumentality.

Added by St.1989, c. 492, § 1. Renumbered by St.1990, c. 177, § 103. Amended by St.1994, c. 60, § 65.

§ 40. Repealed, 1985, 592, Sec. 2

Historical and Statutory Notes

See, now, c. 21G, § 15 et seq.

§ 41. Protection of water supply; conditions

Towns and water supply and fire districts duly established by law may, with the consent and approval of the department of environmental protection, given after due notice and a hearing, take by eminent domain under chapter seventy-nine, or acquire by purchase or otherwise, and hold, lands, buildings, rights of way and easements within the watershed of any pond, stream, reservoir, well or other water used by them as a source of water supply, which said department may deem necessary to protect and preserve the purity of the water supply. All lands taken, purchased or otherwise acquired under this section shall be under the control of the board of water commissioners of the town or district acquiring the same, who shall manage and improve them in such manner as they shall deem for the best interest of the town or district. All damages to be paid by a town or district by reason of any act done under authority hereof may be paid out of the proceeds of the sale of any bonds authorized by law to be issued by such town or district for water supply purposes or from any surplus income of the water works available therefor. A town may also make a contract to contribute to the cost of building, by any other

town situated in the watershed of its water supply, a sewer or system of sewers to aid in protecting such water supply from pollution.
Amended by St.1975, c. 706, § 94; St.1990, c. 177, § 105.

Historical and Statutory Notes

St.1888, c. 160.
R.L.1902, c. 25, § 14.
St.1908, c. 499, §§ 1, 2, 4.
St.1911, c. 135, §§ 1, 2.
St.1919, c. 350, § 96.

§ 41A. Use of water in emergencies

A board of water commissioners or a board of public works with the duties of water commissioners of a municipality, water supply, fire and water district or water company having control of water supplies may, on behalf of their respective bodies politic or corporate, upon notification to the water takers, restrain the use of water on public and private premises by shutting off the water at the meter or at the curb cock or by other means as the case may be, during a drought, hurricane, conflagration or other disaster when in the opinion of the department of environmental protection an emergency exists.
Added by St.1949, c. 793. Amended by St.1975, c. 706, § 95; St.1990, c. 177, § 106.

§§ 41B, 41C. Repealed, 1968, 548, Sec. 2

Historical and Statutory Notes

See, now, c. 111, § 8C.

§ 42. Laying pipes and conduits

The board of aldermen or the selectmen may, upon terms and conditions prescribed by them, authorize the laying of pipes and conduits for the conveyance of water under any public way in their town; provided, that this section shall not authorize any person to supply water to any other person in any town where municipal water works are established except with the consent of the board or authority having charge of such water works therein.

Historical and Statutory Notes

St.1903, c. 459.

§ 42A. Collection of rates and charges for supplying of water; lien for delinquent charges

If the rates and charges due to a city, town or water district, which accepts this section and sections forty-two B to forty-two F, inclusive, by vote of its city council or of the voters in town or district meeting and, by its clerk, files a certificate of such acceptance in the proper registry of deeds, for supplying or providing for water or rendering service or furnishing materials in connection therewith to or for any real estate at the request of the owner or tenant are not paid on or before their due date as established by local regulations, ordinances or by-laws, which due dates shall be so established as to require payments at least as often as semi-annually, such rates and charges, together with interest thereon and costs relative thereto, shall be a lien upon such real estate as provided in section forty-two B. The register of deeds shall record such certificate of acceptance in a book to be kept for the purpose, which shall be kept in an accessible location in the registry. Sections forty-two B to forty-two F, inclusive, shall also apply to a water district which has accepted sections forty-two A to forty-two F, inclusive, and whose clerk has so filed the certificate of acceptance. Wherever in said sections the words "board or officer in charge of the water department" or their equivalent appear, they shall also mean and include the officers exercising similar duties in any city, town or district. A fire district authorized to supply water shall, for the purposes of sections forty-two A to forty-two F, inclusive, be deemed to be a water district.
Amended by St.1932, c. 197, § 2; St.1936, c. 42, § 1; St.1938, c. 415, § 1; St.1941, c. 380, § 1; St.1954, c. 487, § 1.

Historical and Statutory Notes

St.1923, c. 391.
St.1924, c. 107.
St.1927, c. 56.

§ 42B. Effective date of lien; termination; enforcement

Such lien shall take effect by operation of law on the day immediately following the due date of such rate or charge, and, unless dissolved by payment or abatement, shall continue until such rate or charge has been added to or committed as a tax under section forty-two C, and thereafter, unless so dissolved, shall continue as provided in section thirty-seven of chapter sixty; provided, however, that if any such rate or charge is not added to or committed as a tax under section forty-two C for the next fiscal year commencing after the inception of the lien under this section, then said lien shall terminate on October first of the third year following the year in which such charge becomes due.

Notwithstanding such lien any such overdue rate or charge may be collected through any legal

means, including the shutting off of water, which may be deemed advisable; provided, that after the termination of such a lien, no city, town or water district shall attempt to enforce, by shutting off the water, collection of such rate or charge from any person, not liable therefor, who has succeeded to the title or interest of the person incurring such rate or charge. All such rates and charges excluded by court decree under section seventy-six B of chapter sixty shall, to the extent that they were properly chargeable to the person owning, or to the tenant occupying, the premises for which such rates and charges were incurred, be recoverable from such person or tenant, as the case may be, in an action of contract or otherwise. If at the time of the entry of such decree such person or tenant is still the owner or tenant of the premises, whether through redemption or otherwise, such rates and charges to the extent that they were properly chargeable to him, may be enforced in any other manner provided or available for collection and enforcement of water rates and charges.

Amended by St.1935, c. 56, § 1; St.1936, c. 42, § 2; St.1938, c. 415, § 2; St.1941, c. 380, § 2; St.1947, c. 132; St.1954, c. 487, § 2; St.1989, c. 469, § 1.

Historical and Statutory Notes

St.1923, c. 391.
St.1924, c. 413.

§ 42C. Unpaid charges; report to tax collector

If a rate or charge for which a lien is in effect under section forty-two B has not been added to or committed as a tax and remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed by them under section fifty-three of chapter fifty-nine, the board or officer in charge of the water department, or the town collector of taxes, if applicable under section thirty-eight A of chapter forty-one, shall certify such rate or charge to the assessors, who shall forthwith add such rate or charge to the tax on the property to which it relates and commit it with their warrant to the collector of taxes as a part of such tax. If the property to which such rate or charge relates is tax exempt, such rate or charge shall be committed as the tax.

Amended by St.1935, c. 248, § 1; St.1938, c. 415, § 3; St.1941, c. 380, § 3; St.1954, c. 487, § 2; St.1965, c. 250.

Historical and Statutory Notes

St.1923, c. 391.

§ 42D. Unpaid charges; collection as part of property tax

Except as otherwise provided, the provisions of chapters fifty-nine and sixty shall apply, so far as pertinent, to all rates and charges certified to the assessors under section forty-two C. Without limiting the generality of the foregoing, upon commitment as a tax or part of a tax under section forty-two C, all such rates and charges shall be subject to the provisions of law relative to interest on the taxes of which they become, or, if the property were not tax exempt would become, a part; and the collector of taxes shall have the same powers and be subject to the same duties with respect to such rates and charges as in the case of annual taxes upon real estate, and the provisions of law relative to the collection of such annual taxes, the sale or taking of land for the non-payment thereof and the redemption of land so sold or taken shall, except as otherwise provided, apply to such rates and charges.

Amended by St.1935, c. 248, § 2; St.1938, c. 415, § 4; St.1941, c. 380, § 4; St.1950, c. 80; St.1954, c. 487, § 2.

Historical and Statutory Notes

St.1923, c. 391.

§ 42E. Abatements; appeals

An owner of real estate aggrieved by a charge imposed thereon under sections forty-two A to forty-two F, inclusive, in addition to such remedy as he may have under section ten of chapter one hundred and sixty-five, may apply for an abatement thereof by filing a petition with the board or officer having control of the water department within the time allowed by law for filing an application for abatement of the tax of which such charge is, or, if the property were not tax exempt, would have been, a part, and if such board or officer finds that such charge is more than is properly due, a reasonable abatement shall be made; and except as otherwise provided herein, the provisions of chapter fifty-nine relative to the abatement of taxes by assessors shall apply, so far as applicable, to abatements hereunder. If such petition is denied in whole or in part, the petitioner may appeal to the appellate tax board upon the same terms and conditions as a person aggrieved by the refusal of the assessors of a city or town to abate a tax.

Amended by St.1932, c. 180, § 6; St.1939, c. 451, § 7; St.1941, c. 380, § 5.

Historical and Statutory Notes

St.1923, c. 391.

§ 42F. Recovery of delinquent charges from tenants

An owner of real estate who, in order to prevent the imposition of a lien thereon or to discharge the same, has paid charges for water furnished to a tenant or other person who was bound to pay the same, may recover from such tenant or other person in an action of contract the amount of the charges so paid with all incidental costs and expenses.

Historical and Statutory Notes

St.1923, c. 391.

§ 42G. Distribution of water; payment of costs by special assessment

Any city, town or district having a water supply or water distributing system which, in the case of a city or town, accepts this section and the two following sections in cities other than Plan E cities by vote of the city council subject to the city charter, or Plan E cities by vote of the city council, in towns or districts by vote of its inhabitants at an annual town or district meeting called therefor, may provide by ordinance, by-law or vote for the levy of special assessments to meet the whole or part of the cost thereafter incurred of laying pipes in public and private ways for the conveyance or distribution of water to its inhabitants. Such city, town or district may provide that an owner of land which receives benefit from the laying of water pipes in public and private ways upon which his land abuts or which by more remote means receives benefit through the supply of water to his land or buildings shall pay a proportionate part of the cost not already assessed of extending such water supply to his land.

The amount to be charged against each parcel of land receiving such benefit shall include the cost of the pipes and other material and of the labor in laying them and other expenses incidental thereto and shall be ascertained, assessed and certified by the water commissioners or the other officers in charge of the supply and distribution of water in such city, town or district.

Added by St.1955, c. 332. Amended by St.1957, c. 268, § 1.

§ 42H. Uniform rate of assessment

A city, town or district having a water supply or water distributing system may provide that assessment for the cost of providing and laying water pipes thereafter in public and private ways shall be made upon the several parcels of land receiving benefit from the laying of such pipes by a fixed uniform rate based upon the estimated average cost of all the water pipes therein and the laying thereof, according to the frontage of such land on any way in which a water pipe is laid, or according to the area of such land within a fixed depth from such a way, or according to valuation for purposes of taxation in the last annual assessment, or according to two or all of such measures.

Added by St.1955, c. 332.

§ 42*I*. Recordation of assessment to establish lien on property; amount of assessment; extension of time for payment

Whenever the water commissioners or other officers in charge of the supply and distribution of water in a city, town or district which has accepted sections forty-two G to forty-two *I*, inclusive, determine to lay water pipes in public and private ways and assessments may be made under said sections for the construction of such improvement, they shall forthwith cause to be recorded in the registry of deeds of the county or district in which such city, town or district is situated a statement of their action, which shall specify the ways in which such water pipes are to be laid and shall describe such land as does not abut upon any such way which is to be assessed for such improvement, and which shall designate as the owner of each parcel upon which a lien is to be imposed by this section the person who was liable to assessment therefor on the preceding January first under the provisions of chapter fifty-nine. All assessments imposed under sections forty-two G and forty-two H upon any land which abuts upon any such ways in which such water pipes are to be laid or is included in such description shall constitute a lien upon such land from the time such statement is recorded. The provisions of chapter eighty relative to the apportionment, division, reassessment, abatement and collection of assessments, and to interest, shall apply to assessments under this chapter. No assessment shall be levied under sections forty-two H to forty-two I, inclusive, in excess of the benefit to the land assessed from the laying of the water pipes for which the assessment is levied, and if any assessment is found to exceed such benefit, it shall be abated. The water commissioners or other officers in charge of the supply and distribution of water as aforesaid shall, if the order for assessment is upon land not built upon, extend the time of payment of the assessment and interest thereon at

the rate of four per cent until it is built upon or for a fixed time; and the assessment and interest shall be paid within three months after such land is built upon or at the expiration of such fixed period.

Added by St.1955, c. 332. Amended by St.1955, c. 639.

§ 42J. Deferral of charges

In a city, town or district which accepts the provisions of this section, the board responsible for assessing charges for the use of water under section sixty-nine B of chapter forty-one or any other provision of law, shall, upon the application of the owner of the real property to which the water is supplied, if such owner is receiving an exemption from property taxes under clause Forty-first A of section five of chapter fifty-nine with respect to such property, defer charges for water supplied to such property. An application for deferral may be filed with said board within the time limit established for the filing of an application for exemption under said clause Forty-first A.

The board that imposes such charges shall notify the board of assessors of any deferral granted under the provisions of this section, and shall annually thereafter notify said board of assessors of any unpaid water rates and charges to be added to the tax bill. Such charges shall be committed by the assessors along with the real estate taxes for each fiscal year, and secured by the statement of lien executed pursuant to said clause Forty-first A. Upon such qualification for deferral, no further application under this section need be filed in order to qualify for deferral of water charges in subsequent years. No additional notice or statement of lien need be recorded or registered with respect to such deferred water charges, but the amount of such deferred charges shall be listed on any certificate of liens issued under section twenty-three, twenty-three A or twenty-three B of chapter sixty. Whenever a person who has received an exemption under said clause Forty-first A ceases to receive such exemption, the board of assessors shall cease deferring water rates and charges added to the tax bill, and shall notify the board responsible for the assessment of such charges of the discontinuance of such deferral of said charges.

Interest shall be charged upon deferred water charges at the same rate as interest on taxes deferred under said clause Forty-first A. The deferred charges, together with accrued interest shall be due and collectible at the same time and upon the same terms and conditions as taxes deferred under said clause Forty-first A.

The amount of water charges deferred under this section, plus accrued interest, shall not be used in determining whether a taxpayer continues to be eligible for exemption under said clause Forty-first A.

Added by St.1988, c. 42, § 2.

§ 42K. Assessment of betterments

In a city, town or district which accepts the provisions of this section, the water commissioners may assess betterments in accordance with the provisions of chapter eighty for the construction and connection of water mains and services by a uniform unit method which shall be based upon the common main construction costs divided among the total number of existing and potential water units to be served after having allocated the town contribution, if any, and after having proportioned the cost of special (specific unit) and general benefit facilities. Each water unit shall be equal to a single family residence. Potential water units shall be calculated on the basis of zoning in effect at the date of assessment. Existing and potentially and potentially multi-family, commercial, industrial and semi-public uses shall be converted into water units on the basis of residential equivalents.

Added by St.1994, c. 60, § 66.

§ 43. Authorization for laying of pipes for the transmission of steam or hot water

The board of aldermen or the selectmen may, upon terms and conditions prescribed by them, authorize the laying of pipes and conduits for the transmission of steam or hot water for heating, cooking and mechanical power, for private use, under any public way in their town, may regulate and control the same, may at any time require the persons using such pipes and conduits to make alterations in the location or construction thereof, and may, after notice and hearing, order the removal thereof. Any use of such pipes and conduits other than herein authorized shall terminate the authority to maintain the same. Sections twelve, thirteen and fourteen of chapter one hundred and fifty-eight shall apply to proceedings hereunder so far as applicable.

Historical and Statutory Notes

St.1909, c. 103.

§ 43A. Permission to construct pipelines for conveying petroleum or by-products thereof; conditions

The board of alderman or the selectmen may, subject to such terms and conditions as they may deem advisable and subject also to such rules and regulations as may be promulgated by the state department of fire services, grant to any person the right to lay, construct, maintain and operate pipe lines for conveying petroleum or the products or by-products thereof through, over, across or under any public way, other than a way referred to in section forty-four B of chapter thirty, and in connection therewith may grant permission to any such person to dig up, open or tunnel under such public way.

Added by St.1941, c. 678, § 2. Amended by St.1996, c. 151, § 190.

§ 44. Improvement districts; purposes; membership; tenure; powers and duties

A town may, at a town meeting, authorize a village or district therein, if it contains not less than one thousand inhabitants, to organize under a name approved by the town for the purpose of erecting and maintaining street lamps, establishing and maintaining libraries, building and maintaining sidewalks, or for employing and paying police officers, and shall accurately define the limits of such village or district. Such village or district shall have a clerk and a prudential committee, and may have a treasurer and such other officers as it determines, each of whom shall hold office for one year and until another is qualified. Such village or district may adopt by-laws to define the manner of calling its meetings and the duties of its officers, may sue and be sued in the name of its inhabitants, and, so far as appropriate, shall be subject to sections sixty-two, sixty-three, sixty-six, sixty-nine, seventy-one, seventy-two, seventy-three, seventy-seven and seventy-nine of chapter forty-eight.

Historical and Statutory Notes

St.1870, c. 332.
P.S.1882, c. 27, §§ 37 to 40.
R.L.1902, c. 25, § 44.

§ 44A. Regional refuse disposal planning committee

A city or town, by vote of the council in the case of a city and by vote of a town meeting in the case of a town, may create a special unpaid committee to be known as a regional refuse disposal planning committee consisting of three persons to be appointed by the moderator in a town and by the mayor in a city.

Added by St.1965, c. 748, § 1. Amended by St.1967, c. 149.

§ 44B. Regional refuse disposal planning board; study of creation of district; expenses of board; refuse disposal facility defined

Regional refuse disposal planning committees from any two or more cities or towns may join together to form a regional refuse disposal planning board. Such regional refuse disposal planning board shall study the advisability of establishing a regional refuse disposal district, its organization, operation and control, and of selecting, constructing, maintaining and operating a refuse disposal facility to serve the needs of the district, and shall estimate construction and operating costs and study methods of financing such district. Each city or town comprising such board may appropriate a sum not in excess of ten thousand dollars for the purpose of meeting the expenses of the board. Such board may expend any such sums so appropriated and may employ such expert assistance as it deems necessary. Such board may apply for, accept and expend, without appropriation, grants or gifts of funds from the federal government. As used in this section and in sections forty-four C to forty-four K, inclusive, the term "refuse disposal facility" shall mean an incinerator, sanitary land fill, transfer station, composting plant, other sanitary means of refuse disposal approved by the department of environmental protection, or any combination of two or more of such facilities.

Added by St.1965, c. 748, § 1. Amended by St.1967, c. 149; St.1969, c. 199; St.1975, c. 706, § 96; St.1987, c. 584, § 6; St.1990, c. 177, § 107.

§ 44C. Regional refuse disposal planning board; agreement for establishment of district

The regional refuse disposal planning board, consisting only of the regional refuse disposal planning committees which vote in favor of the establishment of a regional refuse disposal district, shall draw up a proposed agreement. The said agreement shall contain provisions describing the sharing of construction and operating costs, the number, method of selection and terms of office of the members of the regional refuse disposal district

committee, the general area in which the refuse disposal facility shall be constructed, the terms by which another city or town may be admitted to the district, the method by which the agreement may be amended, the procedure for the preparation and adoption of the annual budget and any other matters, not incompatible with law, which the said board may deem advisable; provided, however, that all plans for refuse disposal facilities shall be subject to the approval of the state department of environmental protection.

Added by St.1965, c. 748, § 1. Amended by St.1975, c. 706, § 97; St.1990, c. 177, § 108.

§ 44D. Report of board

The regional refuse disposal planning board shall report its findings and recommendations to the board of selectmen and the mayor, as the case may be, of each city or town comprising the board. If the board recommends that a regional refuse disposal district be established, a copy of the proposed agreement shall accompany the report to each such city or town.

Added by St.1965, c. 748, § 1.

§ 44E. Acceptance of recommendation; election; establishment of district

The selectmen of each of the several towns, upon receipt of a recommendation that a regional refuse disposal district be established, shall cause the question of accepting such plan to be presented for determination by vote with printed ballots at the next annual town meeting or at a special town meeting called for the purpose. The mayors of the several cities, upon receipt of a recommendation that a regional refuse disposal district be established, shall submit the question of accepting such plan to the city council within sixty days after receipt of the recommendation. In the case of either a town or a city, the question to be voted on shall be:—"Shall the city (town) accept the provisions of sections 44A to 44K, inclusive, of chapter 40 of the General Laws providing for the establishment of a regional refuse district, together with the towns of ..... and the cities of ....., and the construction, maintenance and operation of a regional refuse disposal facility by said district in accordance with the provisions of a proposed agreement filed with the selectmen or the mayor?"

If a majority of the members of each city council voting on the question and a majority of the voters in each town voting on the question shall vote in the affirmative, the proposed regional refuse disposal district shall be deemed to be established forthwith in accordance with the terms of the proposed agreement.

Added by St.1965, c. 748, § 1.

§ 44F. General powers of district

A regional refuse disposal district, established under the provisions of section forty-four E, shall be a body politic and corporate with the following powers and duties:—

(*a*) To adopt a name and a corporate seal, and the engraved or printed facsimile of such seal appearing on a bond or note of the district shall have the same legal effect as such seal would have if it were impressed thereon.

(*b*) To sue and be sued, but only to the same extent and upon the same conditions that a city or town may be sued.

(*c*) To purchase, or take by eminent domain under chapter seventy-nine land within the cities and towns which have accepted the provisions of sections forty-four A to forty-four K, inclusive, for the purposes of the district, and to construct and originally equip a refuse disposal facility for the benefit of said cities and towns, and to make any necessary contracts in relation thereto.

(*d*) To incur debt for the purpose of acquiring land and constructing, and originally equipping a refuse disposal facility for a term not exceeding twenty years; and provided, further, that written notice of the amount of the debt and of the general purposes for which it was authorized shall be given to the city council of each city, and to the board of selectmen of each town, comprising the district not later than seven days after the date on which said debt was authorized by the district committee; and no debt may be incurred until the expiration of thirty days from the date said debt was authorized by the district committee. If, prior to the expiration of said period, the city council of any member city expresses disapproval of the amount authorized by the district committee, or any member town expresses such disapproval by vote of a majority of the voters present and voting on the matter at a town meeting called for the purpose of expressing such disapproval, the said debt shall not be incurred and the regional refuse disposal planning committee shall thereupon prepare another proposal which may be the same as any prior proposal and an authorization to incur debt therefor.

(*e*) To issue bonds and notes in the name and upon the full faith and credit of said district; said bonds or notes shall be signed by the chairman and the treasurer of the district committee, except that said chairman by a writing bearing his written signature and filed in the office of said treasurer, which writing shall be open to public inspection, may authorize said treasurer to cause to be engraved or printed on said bonds or notes a facsimile of said chairman's signature, and such facsimile signature so engraved or printed shall have the same validity and effect as said chairman's written signature, and each issue of bonds or notes shall be a separate loan.

(*f*) To receive and disburse funds for any district purpose.

(*g*) To incur temporary debt in anticipation of revenue to be received from member cities and towns.

(*h*) To assess member cities and towns for any expenses of the district.

(*i*) To receive any grants or gifts for the purposes of the regional district.

(*j*) To engage legal counsel.

(*k*) To submit an annual report to each of the member cities and towns, containing a detailed financial statement, and a statement showing the method by which the annual charges assessed against each city and town were computed.

(*l*) To employ an executive director and such other employees as it deems necessary to operate such district.

(*m*) To adopt an annual operating budget, not later than December first.

(*n*) To enter into contracts for refuse disposal with non-member cities and towns as well as other bodies politic, the United States of America and other persons.

Added by St.1965, c. 748, § 1. Amended by St.2003, c. 46, § 15.

§ 44G. Exercise of powers; officers of committee

The powers, duties and liabilities of a regional refuse disposal district shall be vested in and exercised by a regional refuse disposal district committee organized in accordance with the agreement. The committee shall choose a chairman by ballot from its membership. It shall appoint a secretary and a treasurer, who may be the same person, but who need not be members of said committee. The treasurer shall receive and take charge of all money belonging to the district and shall pay any bill of the district which shall have been approved by the committee. The treasurer may, by vote of said committee, be compensated for his services. The treasurer of said district shall be subject to the provisions of sections thirty-five, fifty-two and one hundred and nine A of chapter forty-one, to the extent applicable.

Added by St.1965, c. 748, § 1.

§ 44H. Maintenance and operating expenses; debts; determination and apportionment

The regional refuse disposal district committee shall annually determine the amounts necessary to be raised to maintain and operate the district during the ensuing fiscal year, and the amounts required for payment of debt and interest incurred by the district which will be due in the said year, and shall apportion the amount so determined among the several member cities and towns in accordance with the terms of the agreement. The amounts so apportioned for each city or town shall, prior to December thirty-first in each year, be certified by the regional district treasurer to the treasurers of the several cities and towns. The obligation of each member city or town to pay apportionments pursuant to the agreement shall be included in the amounts to be assessed annually in such city or town under section twenty-three of chapter fifty-nine without appropriation and the city or town treasurer shall pay to the district the amounts so apportioned at the times specified in the agreement. The amounts apportioned or to be apportioned pursuant to the agreement shall not be included in the statutory limit of indebtedness of any city or town.

Added by St.1965, c. 748, § 1. Amended by St.1969, c. 849, § 34.

§ 44*I*. Annual audit and report; costs

The director of accounts in the department of corporations and taxation shall annually cause an audit to be made of the accounts of the regional refuse disposal district committee, and for this purpose he, and his duly accredited agents, shall have access to all necessary papers, books, and records. Upon the completion of each audit, a report thereon shall be made to the chairman of said district committee, and a copy thereof shall be sent to the mayor and to the chairman of the board of select-

men, respectively, of each city and town which is a member of said district. The director shall apportion the cost among the several cities and towns which are members of the district on the basis provided by section forty-four C, and submit the amounts of each apportionment to the state treasurer, who shall issue his warrant requiring the assessors of the cities and towns which are members of the district to assess a tax to the amount of the expense, and such amounts shall be collected and paid to the state treasurer, as provided by section twenty of chapter fifty-nine.
Added by St.1965, c. 748, § 1.

§ 44J. Sale, lease or license of lands or facilities to refuse disposal districts

The agreement made under section forty-four C, or any amendment to such an agreement, may contain provisions authorizing any member city or town to sell, lease or license to the regional refuse disposal district any refuse disposal facility and any land appurtenant thereto or used in connection therewith or any other property useful for the purposes of the district, and any such city or town may authorize such sale, lease or license accordingly, notwithstanding the provisions of section three of chapter forty or any other provisions of law to the contrary. In case of a sale, the price and time or times of payment and the method by which the cities and towns other than the selling city or town shall be assessed for such payment shall be set forth in the agreement or amendment; but in no case shall payments be made which shall extend over a period in excess of twenty years. In the case of a lease or license, the rental or license fee and terms of payment and assessment shall be set forth in the agreement or amendment. The lease or license may be for a term not in excess of twenty years, and may contain provisions for the extension of the lease or license for an additional term not in excess of twenty years at the option of the regional refuse disposal district committee.
Added by St.1965, c. 748, § 1.

§ 44K. Bonds and notes; limit of indebtedness

The provisions of sections sixteen to twenty-eight, inclusive, of chapter forty-four shall, so far as apt, apply to regional refuse disposal districts, but the provisions of section sixteen relating to the countersigning of bonds and notes and the provisions of section twenty-four relating to the countersigning and approval of notes and the certificates of the clerk relating thereto shall not apply to such districts. Any debt incurred by a regional refuse disposal district shall not be subject to the limit of indebtedness prescribed in section ten of chapter forty-four.
Added by St.1965, c. 748, § 1. Amended by St.1987, c. 584, § 7.

§ 44L. Issuance of debt obligations to pay for project costs

The rights and powers granted to cities and towns by the provisions of section twenty-eight C of chapter forty-four shall apply to regional refuse disposal districts and for the purpose of said section twenty-eight C the chief executive officer of a regional refuse disposal district shall be the regional refuse disposal district committee.
Added by St.1987, c. 584, § 8.

§ 45. Recognizance; permission to designate an agent

The selectmen of a town required to enter into a recognizance may by an order or vote authorize any person to enter into the recognizance in its name and behalf. No surety shall be required thereon.

Historical and Statutory Notes

St.1833, c. 216.
R.S.1836, c. 15, §§ 88, 89.
G.S.1860, c. 18, § 18.
P.S.1882, c. 27, § 51.
R.L.1902, c. 25, § 58.

§ 46. Certification of claims

Any person authorized to approve a claim against a town for labor, materials or service may, before approval thereof, require the claimant to certify under oath that all the articles for which claim is made have been furnished, or that all the labor or service has been performed, and that no commission, discount, bonus, reward or present of any kind has been received by, or promised to, or is expected by, any person on account of the same.

Historical and Statutory Notes

St.1862, c. 101, § 3.
P.S.1882, c. 27, § 111.
St.1893, c. 423, § 40.
R.L.1902, c. 25, § 98.

§ 47. Town seal; establishment; use

Each town shall have a seal, established at a town meeting, to be kept by the town clerk. Papers or documents issued from any office or board of the town may be attested therewith. Cities

which had an authorized seal in use on May tenth, eighteen hundred and ninety-nine, may continue to use such seal until changed by ordinance, and other cities shall by ordinance establish a seal of the city and designate the custodian thereof.

Historical and Statutory Notes

St.1898, c. 389, § 2.
St.1899, c. 256, §§ 1, 2.
R.L.1902, c. 25, § 28; c. 26, § 4.

§ 48. Establishment of suitable place to keep books; penalty for noncompliance; custody of books and records

Every town shall provide suitable places, to be approved by the supervisor of public records, for the preservation and convenient use of all books, reports and laws received from the commonwealth; and for every month's neglect so to do shall forfeit ten dollars. Said books, reports and laws shall be in the custody or control of the town clerk, unless the city council or selectmen shall by vote designate some other person to have said custody or control of all or part of the same.

Historical and Statutory Notes

St.1858, c. 106, §§ 1, 2.
G.S.1860, c. 18, § 17.
P.S.1882, c. 27, § 24.
R.L.1902, c. 25, § 27.
St.1907, c. 117.
St.1908, c. 142, §§ 1, 2.
St.1919, c. 350, § 24.

§ 49. Annual town reports; publication; penalty for noncompliance

The selectmen, before the annual town meeting, shall at the expense of the town print the annual town report for the use of the inhabitants containing the report of the selectmen for the calendar or fiscal year preceding said meeting, the report of the school committee, statements in tabulated form prepared under section sixty of chapter forty-one unless otherwise printed as provided in said section, the annual report of the town accountant for the preceding fiscal year as provided in section sixty-one of chapter forty-one, the annual report of the town treasurer as provided in section thirty-five of chapter forty-one, and except as otherwise provided by vote or by-law of the town, of such other officers and boards as consider it expedient to make a report, the jury list as required by chapter two hundred and thirty-four, and such other matters as the law, or the town by vote or by-law, requires or as the selectmen consider expedient. If the selectmen neglect or refuse to make the annual report, they shall severally forfeit fifty dollars.

A town may by by-law provide for the printing of such fiscal year reports as it deems suitable within ninety days of the close of the fiscal year. A copy of such fiscal year reports shall be transmitted by the town clerk to the state library before the first day of November. A town may also by by-law provide for the printing of all reports of town officers and boards, committees and commissions on a fiscal year basis in place of the calendar year report required by this section.

Amended by St.1969, c. 849, § 34A; St.1971, c. 766, § 8; St.1975, c. 219; St.1991, c. 212; St.2000, c. 105.

Historical and Statutory Notes

R.L.1902, c. 25, § 29.
St.1918, c. 291, § 4.

§ 50. Annual town report; copy to state library

One copy or more of the annual report and of any special report of a town shall annually, on or before the last day of May, be transmitted by the town clerk to the state library, and until such transmission the publications distributed by the commonwealth shall be withheld from the town.

Amended by St.1974, c. 268.

Historical and Statutory Notes

St.1866, c. 195, §§ 1, 2.
P.S.1882, c. 27, §§ 25, 26.
R.L.1902, c. 25, § 30.

§ 51. Publication of information concerning persons receiving aid from governmental agencies forbidden; exceptions; penalties

No town or officer thereof shall publish or disclose in any manner to others than officers of any city, town or other governmental agency or the duly authorized agents of such officers the names of any persons residing in such town who received benefits under chapter one hundred and fifteen, except that a duly incorporated charitable corporation shall be informed, upon its request, as to whether or not any designated person has received such benefits. No department, board or commission, or agent thereof, of a town providing aid, guidance or advice solely to persons who are in active military or naval service during the time of war, or who were formerly in such service, or to the dependents of any such persons, shall furnish any records or information to any social service index, so called, or exchange information with any other agency, except as hereinbefore provided.

Whoever violates any provision of this section shall be punished by a fine of not less than twenty-five nor more than five hundred dollars.

Amended by St.1937, c. 196; St.1945, c. 340; St.1946, c. 584, § 3; St.1974, c. 260, § 2.

Historical and Statutory Notes

St.1910, c. 412.
St.1919, c. 290, § 2.
St.1931, c. 394, § 110.

§ 52. Size of official letters

All official letters from officers of towns shall be written or printed, so far as practicable, on paper eight and one half inches wide and eleven inches long.

Historical and Statutory Notes

St.1913, c. 702.

§ 53. Restraint of illegal appropriations; ten taxpayer actions

If a town, regional school district, or a district as defined in section one A, or any of its officers or agents are about to raise or expend money or incur obligations purporting to bind said town, regional school district, or district for any purpose or object or in any manner other than that for and in which such town, regional school district, or district has the legal and constitutional right and power to raise or expend money or incur obligations, the supreme judicial or superior court may, upon petition of not less than ten taxable inhabitants of the town, or not less than ten taxable inhabitants of any town in the regional school district, or not less than ten taxable inhabitants of that portion of a town which is in the district, determine the same in equity, and may, before the final determination of the cause, restrain the unlawful exercise or abuse of such corporate power.

Amended by St.1969, c. 507.

Historical and Statutory Notes

St.1847, c. 37.
G.S.1860, c. 18, § 79.
P.S.1882, c. 27, § 129.
St.1885, c. 312, § 5.
St.1891, c. 293.
St.1898, c. 490.
R.L.1902, c. 25, § 100.

§ 54. Building permit restrictions; availability of water supply; disposal of debris

No building permit shall be issued for the construction of a building which would necessitate the use of water therein, unless a supply of water is available therefor either from a water system operated by a city, town or district, or from a well located on the land where the building is to be constructed, or from a water corporation or company, as defined in section one of chapter one hundred and sixty-five.

Every city or town shall require, as a condition of issuing a building permit or license for the demolition, renovation, rehabilitation or other alteration of a building or structure, that the debris resulting from such demolition, renovation, rehabilitation or alteration be disposed of in a properly licensed solid waste disposal facility, as defined by section one hundred and fifty A of chapter one hundred and eleven. Any such permit or license shall indicate the location of the facility at which the debris is to be disposed. If for any reason, the debris will not be disposed of as indicated, the permittee or licensee shall notify the issuing authority as to the location where the debris will be disposed. The issuing authority shall amend the permit or license to so indicate.

Added by St.1965, c. 385, § 1. Amended by St.1987, c. 584, § 9.

§ 54A. State consent to issuance of permit to build on lands formerly used as a railroad right-of-way; damages in absence thereof

If a city or town or any other person purchases any lands formerly used as a railroad right-of-way or any property appurtenant thereto formerly used by any railroad company in the commonwealth, no permit to build a structure of any kind on land so purchased shall be issued by any city or town in the commonwealth without first obtaining, after public hearing, the consent in writing to the issuance of such permit from the secretary of the executive office of transportation and construction. If said secretary does not consent to the issuance of such permit, the owner of the land may recover from the commonwealth such damages as would be awarded under the provisions of chapter seventy-nine.

Notwithstanding the provisions of the second sentence of the foregoing paragraph, there shall be no recovery from the commonwealth in damages under said sentence by an owner of such land purchased after January first, nineteen hundred and seventy-six.

Added by St.1973, c. 963. Amended by St.1975, c. 859, § 18A.

§ 55. Annuity contract, custodial account or other investment for hospital employees

Any city through an officer designated by the city council or any town through an officer designated by the selectmen which operates a hospital may enter into a written agreement with such hospital employees to purchase or make payments to an individual or group annuity contract, custodial account, or any other investment authorized under section 403(b) of the Internal Revenue Code[1] for such employee; provided, however, that in no event shall the total of the premiums paid for the purchase of any such annuity, custodial account, or other investment and the employee's includible compensation for any year exceed the total annual salary or compensation under the existing salary schedule or classification plan applicable to such employee in such year. As used in this section, the words "includible compensation" shall have the same meaning as in said section 403(b) and the word "premiums" shall include contributions paid to any such custodial account or other investment. Such employee's rights under such annuity contract, custodial account or other investment shall be nonforfeitable. Such contract shall be purchased only from an insurer authorized to issue life insurance or annuity contracts in the commonwealth; any such custodial account or other investment shall be purchased only from a company or corporation authorized to sell such other investments in the commonwealth; provided, however, that any such city or town may agree with any such employee or prospective employee who has an annuity contract, custodial account or any such other investment in force for at least ninety days prior to the effective date of such agreement to continue to make premium payments under such contract, account or investment subsequent to the effective date of such agreement, without regard to whether or not such contract, account or investment has been issued or sold by an entity authorized to issue or sell such contracts, accounts or other investments in the commonwealth, but in such case any subsequent contract shall be purchased only from an insurer authorized to issue life insurance or annuity contracts in the commonwealth, and any such custodial account or other investment shall be purchased only from a company or corporation authorized to sell such accounts or other investments in the commonwealth. Upon execution of such an agreement, the officer of the city or town thereunto authorized shall forthwith give written notice thereof to the treasurer of such city or town and shall certify the amount and dates of premiums payable under the terms of such contract, account or investment, the name of the issuing insurer or selling company or corporation and the office to which such premium payments shall be made. Said treasurer shall thereafter make such premium payments while such contract, account or investment is in force and such employee is actively employed by the city or town and, upon written notice duly given by said officer, shall make any changes in the manner or amount of premium payments required under the terms of any subsequent agreement, contract, account or investment entered into by such employee and the city or town and shall stop such premium payments when so notified by such officer. Such city or town shall not offer to such employee any such annuity plan, custodial account or other investment to the exclusion of any other plan, custodial account or other investment, whether group or individual.

Added by St.1970, c. 337. Amended by St.1987, c. 348, § 1.

[1] 26 U.S.C.A. § 403(b).

§ 56. Percentages of local tax levy for property

The commissioner shall triennially certify as to whether the board of assessors is assessing property at full and fair cash valuation. Once certified, a city or town may classify in the manner set out in this section for the year of certification and for the two years next following said year of certification. The selectmen or town council of each town and the city council together with the mayor's approval in each city, which city or town has been certified by the commissioner of revenue to be assessing property at full and fair cash valuation, shall annually first determine the percentages of the local tax levy to be borne by each class of real property, as defined in section two A of chapter fifty-nine, and personal property for the next fiscal year; provided, however, that if the mayor vetoes the city council's percentages, in a city, the city council may override such veto with a vote equal to two-thirds of the members elected. In determining such percentages, the selectmen, town council or the city council, together with the mayor's approval, as the case may be, shall first adopt a residential factor; provided, however, that if the mayor vetoes the city council's factor, in a city, the city council may override such veto with a vote equal to two-thirds of the members elected. Said factor shall be an amount not less than the minimum residential factor determined by the commissioner of revenue

in accordance with the provisions of section one A of chapter fifty-eight and shall be used by the board of assessors to determine the percentages of the local tax levy to be borne by each class of real and personal property. Prior to the adoption of such percentages, the selectmen, town council or the city council, as the case may be, shall conduct a public hearing on the question of their adoption. At such hearing, the board of assessors shall provide all information and data relevant to making such determination and the fiscal effect of the available alternatives. The commissioner of revenue shall not approve the tax rate of a city or town under section twenty-three of chapter fifty-nine until the selectmen, town council or the city council, as the case may be, have held such a public hearing and until the city or town has adopted the percentages of the local tax levy to be borne by each class of real and personal property.

Class one percentage, the full and fair cash valuation of the class one property divided by the full and fair cash valuation of all real and personal property in said city or town multiplied by the residential factor.

Class two percentage, the full and fair cash valuation of the class two property divided by the full and fair cash valuation of all real and personal property in said city or town multiplied by not less than seventy-five per cent of the residential factor.

Class three percentage, the full and fair cash valuation of the class three property divided by the sum of full and fair cash valuation of class three and class four real property and personal property in such city or town multiplied by the difference between one hundred per cent and the sum of the class one and two percentages.

Class four percentage, the full and fair cash valuation of the class four property divided by the sum of the full and fair cash valuation of the class three and class four real property and personal property in such city or town multiplied by the difference between one hundred per cent and the sum of the class one and class two percentages.

Personal property percentage, the full and fair cash valuation of the personal property in a city or town divided by the sum of the full and fair cash valuation of the class three and class four real property and the personal property in a city or town multiplied by the difference between one hundred per cent and the sum of the class one and class two percentages.

As used in this section the full and fair cash valuation amounts shall be those amounts as determined by the commissioner of revenue and sent to each city and town pursuant to section one A of chapter fifty-eight.

The percentages, so determined, shall upon certification of the commissioner be transmitted to the board of assessors to be used in setting the tax rates pursuant to section twenty-three A of chapter fifty-nine.

Notwithstanding the first paragraph, the commissioner may, from time to time, issue a revised schedule for the year in which the commissioner shall certify whether the board of assessors is assessing property at full and fair cash valuation. After the schedule is issued, a city or town may classify in the manner set forth in this section for any year before the next year of certification established in the schedule for the city or town. In arranging the schedule, the commissioner shall, so far as is practicable and appropriate, consider at least the following goals: balancing the number of certification reviews conducted in each year of the triennial period; facilitating and implementing joint or cooperative assessing agreements or districts; assisting the boards of assessors to comply with minimum standards of assessment performance established under section 1 of chapter 58; and producing uniformity in the valuation, classification and assessment of property within each city or town and throughout the commonwealth.

Added by St.1979, c. 797, § 1. Amended by St.1980, c. 261, § 2; St.1981, c. 419; St.1982, c. 369, §§ 1, 2; St.1983, c. 79, § 1; St.1989, c. 718, § 2; St.2010, c. 188, § 25, eff. July 27, 2010.

§ 57. Local licenses and permits; denial, revocation or suspension for failure to pay municipal taxes or charges

Any city or town which accepts the provisions of this section, may by by-law or ordinance deny any application for, or revoke or suspend a building permit, or any local license or permit including renewals and transfers issued by any board, officer, department for any person, corporation or business enterprise, who has neglected or refused to pay any local taxes, fees, assessments, betterments or any other municipal charges, including amounts assessed under the provisions of section twenty-one D or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or

exercised on or about real estate whose owner has neglected or refused to pay any local taxes, fees, assessments, betterments or any other municipal charges. Such by-law or ordinances shall provide that:

(a) The tax collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the tax collector, shall annually furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

(b) The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the tax collector or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the tax collector; provided, however, that written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the license authority receives a certificate issued by the tax collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as the date of issuance of said certificate.

(c) Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

(d) The board of selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in section one of chapter two hundred and sixty-eight A in the business or activity conducted in or on said property.

This section shall not apply to the following licenses and permits: open burning; section thirteen of chapter forty-eight; bicycle permits; section eleven A of chapter eighty-five; sales of articles for charitable purposes, section thirty-three of chapter one hundred and one; children work permits, section sixty-nine of chapter one hundred and forty-nine; clubs, associations dispensing food or beverage licenses, section twenty-one E of chapter one hundred and forty; dog licenses, section one hundred and thirty-seven of chapter one hundred and forty; fishing, hunting, trapping license, section twelve of chapter one hundred and thirty-one; marriage licenses, section twenty-eight of chapter two hundred and seven and theatrical events, public exhibition permits, section one hundred and eighty-one of chapter one hundred and forty.

A city or town may exclude any local license or permit from this section by by-law or ordinance. Added by St.1985, c. 640. Amended by St.1992, c. 286, § 117; St.1993, c. 408, §§ 1, 2; St.1996, c. 74, §§ 1, 2.

§ 58. Municipal charges lien

Any city or town may impose a lien on real property located within the city or town for any local charge or fee that has not been paid by the due date, said lien shall be known as the "municipal charges lien"; provided, that a separate vote at a town meeting, or by a city or town council is taken for each type of charge or fee.

A municipal charges lien authorized under this section shall take effect upon the recording of a list of unpaid municipal charges and fees by parcel of land and by the name of the person assessed for the charge or fee in the registry of deeds of the county or district where the land subject to the lien lies.

If a charge or fee which is secured by a municipal charges lien remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed under section fifty-three of chapter fifty-nine, the board or officer in charge of the collection of the municipal charge or fee, or the town collector of taxes, if applicable under section thirty-eight A of chapter forty-one, shall certify such charge or fee to the assessors, who shall forthwith add such charge or fee to the tax on the property to which it relates and commit it with their warrant to the collector of taxes as part of such tax.

If the property to which such charge or fee relates is tax exempt, such charge or fee shall be committed as the tax. A lien under this section may be discharged by filing a certificate from the tax collector that all municipal charges or fees constituting the lien, together with any interest and costs thereon, have been paid or legally abated. All costs of recording or discharging a lien under this section shall be borne by the owner of the property.

Added by St.1987, c. 626.

§ 59. Tax increment financing plan

Notwithstanding any general or special law to the contrary, any city or town by vote of its town meeting, town council, or city council with the approval of the mayor where required by law, on its own behalf or in conjunction with one or more cities or towns, and pursuant to regulations issued by the director of housing and community development, may adopt and prosecute a tax increment financing hereinafter referred to as TIF plan, and do any and all things necessary thereto; provided, however, that the TIF plan:

(i) designates one or more areas of such city or town as a TIF zone; provided, however, that each area so designated is wholly within an area designated by the director of economic development, pursuant to regulations adopted by the economic assistance coordinating council established pursuant to section three B of chapter twenty-three A, as presenting exceptional opportunities for increased economic development; provided, further, that in the case of a TIF plan adopted by more than one city or town, the areas designated as TIF zones shall be contiguous areas of such cities or towns;

(ii) describes in detail all construction and construction-related activity, public and private, contemplated for such TIF zone as of the date of adoption of the TIF plan; provided, however, that in the case of public construction as aforesaid, the TIF plan shall include a detailed projection of the costs thereof and a betterment schedule for the defrayal of such costs; provided, further, that the TIF plan shall provide that no costs of such public constructions shall be recovered through betterments or special assessments imposed on any party which has not executed an agreement in accordance with the provisions of clause (v); and provided, further, that in the case of private construction as aforesaid, the TIF plan shall include the types of industrial and commercial developments which are projected to occur within such TIF zone, with documentary evidence of the level of commitment therefor, including but not limited to architectural plans and specifications as required by said regulations;

(iii) authorizes tax increment exemptions from property taxes, under clause Fifty-first of section 5 of chapter 59, for a specified term not to exceed 20 years, for any parcel of real property which is located in the TIF zone and for which an agreement has been executed with the owner of the real property under clause (v); provided, however, that the TIF plan shall specify the level of the exemptions expressed as exemption percentages, not to exceed 100 per cent to be used in calculating the exemptions for the parcel, and for personal property situated on that parcel, as provided under said clause Fifty-first of said section 5 of said chapter 59; provided, further, that the exemption for each parcel of real property shall be calculated using an adjustment factor for each fiscal year of the specified term equal to the product of the inflation factors for each fiscal year since the parcel first became eligible for an exemption under this clause; provided, further that the inflation factor for each fiscal year shall be a ratio;

(a) the numerator of which shall be the total assessed value of all parcels of commercial and industrial real estate that are assessed at full and fair cash value for the current fiscal year minus the new growth adjustment for the current fiscal year attributable to the commercial and industrial real estate as determined by the commissioner of reve-

nue under subsection (f) of section 21C of chapter 59; and

(b) the denominator of which shall be the total assessed value for the preceding fiscal year of all the parcels included in the numerator; provided, however, that the ratio shall not be less than 1;

(iv) establishes a maximum percentage of the costs of any public construction, referenced in clause (ii) and initiated subsequent to the adoption of the TIF plan, that can be recovered through betterments or special assessments against any parcel of real property eligible for tax increment exemptions from property taxes pursuant to clause (iii) during the period of such parcel's eligibility for exemption from annual property taxes pursuant to clause fifty-first of section five of chapter fifty-nine, notwithstanding the provisions of chapter eighty or any other general or special law authorizing the imposition of betterments or special assessments;

(v) includes executed agreements between such city or town and each owner of a parcel of real property which is located in such TIF zone; provided, however, that each such agreement shall include: (1) all material representations of the parties which served as the basis for the descriptions contained in the TIF plan in accordance with the provisions of clause (ii); (2) a detailed recitation of the tax increment exemptions and the maximum percentage of the cost of public improvements that can be recovered through betterments or special assessments regarding such parcel of real property pursuant to clauses (iii) and (iv); (3) a detailed recitation of all other benefits and responsibilities inuring to and assumed by the parties to such agreement; and (4) a provision that such agreement shall be binding upon subsequent owners of such parcel of real property;

(vi) delegates to one board, agency or officer of the city or town the authority to execute agreements in accordance with the provisions of clause (v);

(vii) is certified as an approved TIF plan by the economic assistance coordinating council established by section three B of chapter twenty-three A pursuant to regulations adopted by said council; provided, however, that the economic assistance coordinating council shall find, based on the information submitted in support of the TIF plan by the city or town and such additional investigation as the economic assistance coordinating council shall make, and incorporate in its minutes, that the plan is consistent with the requirements of this section and will further the public purpose of encouraging increased industrial and commercial activity in the commonwealth; provided, further, that a city or town may at any time revoke its designation of a TIF zone and, as a consequence of such revocation, shall immediately cease the execution of any additional agreements pursuant to clause (v); provided, further, such revocation shall not affect agreements relative to property tax exemptions and limitations on betterments and special assessments pursuant to said clause (v) which were executed prior thereto; and provided, further, that the board, agency or officer of the city or town authorized pursuant to clause (vi) to execute agreements shall forward to the board of assessors a copy of each such agreement, together with a list of the parcels included therein; and

(viii) requires of an owner of a parcel pursuant to clause (v) to submit to the city or town clerk and the economic assistance coordinating council a report detailing the status of the construction laid out in the plan; the current value of the property; and the number of jobs created to date as a result of the plan; provided, however, that a report shall be filed every 5 years for the term of the tax increment exemption allowed under clause Fifty-first of section 5 of chapter 59; and provided further, that a final report shall be filed in the final year of the exemption.

Added by St.1993, c. 19, § 12. Amended by St.1993, c. 110, § 104; St.1996, c. 450, § 96; St.1998, c. 161, §§ 253, 254; St.2010, c. 240, §§ 75, 76, eff. Aug. 1, 2010; St.2010, c. 454, §§ 30 to 33, eff. Jan. 14, 2011.

§ 60. Urban center housing tax increment financing zone (UCH–TIF)

(a) Notwithstanding any general or special law to the contrary, a city or town by vote of its town meeting, town council or city council with the approval of the mayor where required by law, on its own behalf or in conjunction with 1 or more cities or towns and under regulations issued by the director of housing and community development, in consultation with the department of economic development and the department of revenue, may adopt and prosecute an urban center housing tax increment financing plan, in this section referred to as a UCH–TIF plan, intended to encourage increased residential growth, affordable housing and commercial growth in urban center housing zones and do all things necessary thereto; provided, however, that the UCH–TIF plan shall:—

(i) designate any area of the city or town as an urban center housing tax increment financing zone, in this section referred to as a UCH–TIF zone, which shall be defined as a commercial center characterized by a predominance of commercial land uses, a high daytime or business population, a high concentration of daytime traffic and parking and a need for multi-unit residential properties; provided, however, that the designation of a UCH–TIF zone shall be subject to the approval of the department of housing and community development under regulations adopted by the department consistent with this section; provided further, that a city or town may not enter into any UCH–TIF agreement, as defined in clause (v), unless the area governed by the UCH–TIF agreement is so designated and approved by the department of housing and community development; and provided further, that in the case of a UCH–TIF plan adopted by more than 1 city or town, the areas designated as UCH–TIF zones shall be contiguous areas of those cities and towns;

(ii) describe in detail all construction, reconstruction, rehabilitation and related activities, public and private, contemplated for such UCH–TIF zone as of the date of the adoption of the UCH–TIF plan; provided, however, that in the case of public construction as aforesaid, the UCH–TIF plan shall include a detailed projection of the costs and a betterment schedule for the defrayal of such costs; provided further, that the UCH–TIF plan shall provide that no costs of such public constructions shall be recovered through betterments or special assessments imposed on a party which has not executed a UCH–TIF agreement in accordance with clause (v); and provided, further, that in the case of private construction as aforesaid, the UCH–TIF plan shall include the types of affordable housing and residential and commercial growth which are projected to occur within such UCH–TIF zone, with documentary evidence of the level of commitment therefor including, but not limited to, architectural plans and specifications as required by the regulations;

(iii) authorize tax increment exemptions from property taxes, under clause Fifty-first of section 5 of chapter 59, for a specified term not to exceed 20 years, for any parcel of real property which is located in the UCH–TIF zone and for which an agreement has been executed under clause (v); provided, however, that the UCH–TIF plan shall specify the level of exemptions expressed as exemption percentages, not to exceed 100 per cent to be used in calculating the exemptions for the parcel, and for personal property situated on that parcel, as provided under said clause Fifty-first of said section 5 of said chapter 59; provided, further, that the exemption for each parcel of real property shall be calculated using an adjustment factor for each fiscal year of the specified term equal to the product of the inflation factors for each fiscal year since the parcel first became eligible for such exemption under this clause; provided, further, that the inflation factor for each fiscal year shall be a ratio:

(1) the numerator of which, shall be the total assessed value of all parcels of all residential real estate that are assessed at full and fair cash value for the current fiscal year minus the new growth adjustment factor for the current fiscal year attributable to the residential real estate as determined by the commissioner of revenue under paragraph (f) of section 21C of said chapter 59; or

(2) the numerator of which, in a UCH–TIF zone where the property includes a mix of residential and commercial uses, shall be the total assessed value of all parcels of all residential and commercial real estate that are assessed at full and fair cash value for the current fiscal year minus the new growth adjustment factor for the current fiscal year attributable to the residential and commercial real estate as determined by the commissioner of revenue under said paragraph (f) of said section 21C of said chapter 59; and

(3) the denominator of which shall be the total assessed value for the preceding fiscal year of all the parcels included in the numerator; provided, however, that such ratio should not be less than 1.

(iv) establish a maximum percentage of the costs of any public construction, referenced in clause (ii) and initiated subsequent to the adoption of the UCH–TIF plan, that can be recovered through betterments or special assessments against real property eligible for tax increment exemptions from property taxes under clause (iii) during the period of the parcel's eligibility for exemption from annual property taxes under said clause Fifty-first of said section 5 of said chapter 59, notwithstanding chapter 80 or any other general or special law authorizing the imposition of betterments or special assessments;

(v) include executed agreements, hereinafter referred to as UCH–TIF agreements, between a city and town and each owner of real property which is located in a UCH–TIF zone, but each such agreement shall include, but not be limited to, the fol-

lowing: (1) all material representations of the parties which served as a basis for the descriptions contained in the UCH–TIF plan in accordance with clause (ii) and which served as a basis for the granting of a UCH–TIF exemption; (2) any terms deemed appropriate by the city or town relative to compliance with the UCH–TIF agreement including, but not limited to, what shall constitute a default by the property owner and what remedies shall be allowed between the parties for any such defaults, including an early termination of the agreement; (3) provisions requiring that either 25 per cent of the housing units assisted by the UCH–TIF agreement shall be affordable to occupants or families with incomes at or below 80 per cent of the median income for the area in which the city or town is located as defined by the United States Department of Housing and Urban Development or such other requirement of affordable housing as is necessary to achieve financial feasibility for the development pursuant to regulations and guidelines promulgated by the department of housing and community development; (4) provisions stating that housing units that meet the affordability requirements of subclause (3) shall subject to use restrictions as defined in this section; (5) provisions stating that the property shall be subject to an option to purchase and a right of first refusal as defined in subsections (c) and (d); (6) a detailed recitation of the tax increment exemptions and the maximum percentage of the cost of public improvements that can be recovered through betterments or special assessments regarding a parcel of real property pursuant to clauses (iii) and (iv); (7) a detailed recitation of all other benefits and responsibilities inuring to and assumed by the parties to an agreement; and (8) a provision that the agreement shall be binding upon subsequent owners of the parcel of real property; and

(vi) delegate to a board, agency or officer of the city or town, the authority to execute agreements in accordance with clause (v).

(b) An executed UCH–TIF agreement shall be submitted by the applicable city or town to the department of housing and community development for the approval of the director; provided, however, that the city or town shall, if it has not previously done so, submit a plan showing the boundaries of its urban center housing zone and a report explaining the criteria used by the city or town in establishing the zone; provided, however, that the director shall review each UCH–TIF plan and agreement to determine whether they comply with the terms of this section and any regulations which may be adopted by the director of housing and community development; provided further, that the director shall certify, based upon the information submitted in support of the UCH–TIF plan by the city or town and through such additional investigation as the director shall make, that the plan and agreement are consistent with the requirements of this section and will further the public purpose of encouraging increased residential growth, affordable housing and commercial growth in the commonwealth; provided further, that a city or town may, at any time, revoke its designation of a UCH–TIF zone and, as a consequence of such revocation, shall immediately cease the execution of any additional agreements under clause (v) of subsection (a); provided, further, that a revocation shall not affect agreements relative to property tax exemptions and limitations on betterments and special assessments under said clause (v) of said subsection (a) or use restrictions or options to purchase and rights of first refusal required by this section which were executed before the revocation; provided further, that the board, agency, or officer of the city or town authorized under clause (vi) of said subsection (a) to execute agreements shall forward to the board of assessors a copy of each such agreement, together with a list of the parcels included therein; and provided further, that an executed and approved UCH–TIF shall be recorded in the registry of deeds or the registry district of the land court wherein the land lies.

(c) Notwithstanding any other general or special law to the contrary, an affordable housing unit benefiting from a real estate tax exemption under this section that meets the affordability requirements of subclause (3) of clause (v) of subsection (a) shall continue to meet those requirements for 40 years or for its useful life, whichever is longer as may be specified in the recorded restriction. Such restriction shall be approved by the department of housing and community development in accordance with section 32 of chapter 184 and shall be recorded in the registry of deeds or the registry district of the land court wherein the land lies. Upon the expiration of such restrictions, the department of housing and community development or its assignee shall have an option to purchase the property subject to or previously subject to a UCH–TIF agreement.

(d) (1) Within 120 days after the expiration of the affordability restrictions created under this sec-

tion, the department or its assignee, who shall be a qualified developer selected pursuant to the terms of this section under the guidelines of the department, shall have an option to purchase the property at its current appraised value reduced by any remaining obligation of the owner. Two impartial appraisers shall determine, within 60 days after the expiration of the affordability restrictions, the current appraised value in accordance with recognized professional standards. Two professionals in the field of multi-unit residential housing shall select each such appraiser. The owner and the department, respectively, shall each designate 1 professional within 30 days after the expiration of the affordability restrictions. If there exists a difference in the valuations provided by the appraisals, the 2 valuations shall be added together and divided by 2 to determine the current appraised value of the property.

(2) Prior to a sale or transfer or other disposition of housing assisted under this section where the department has not previously exercised an option to purchase, an owner shall offer the department or its assignee, who shall be a qualified developer selected under this section under the guidelines of the department, a first refusal option to meet a bona fide offer to purchase the property. The owner shall provide to the department or its assignee written notice, by regular and certified mail, return receipt requested, of his intention to sell, transfer or otherwise dispose of the property. The department or its assignee shall hold a first refusal option for the first 120 days after receipt of the owner's notice of intent to transfer the property. Failure to respond to the written notice of the owner's intent to sell, transfer or otherwise dispose of the property within 120 days after the receipt of the notice shall constitute a waiver of the right of first refusal by the department.

(3) No sale, transfer or other disposition of the land shall be consummated until either the first refusal option period has expired or the owner was notified in writing by the department or assignee in question that the option will not be exercised. Such option may be exercised only by written notice signed by a designated representative of the department or its assignee, mailed to the owner by certified mail at such address as may be specified in his notice of intention and recorded with the registry of deeds or the registry district of the land court of the county in which the affected real property is located, within the option period. If the first refusal option has been assigned to a qualified developer selected under this section under guidelines issued by the department, such written notice shall state the name and address of the developer and the terms and conditions of the assignment. An affidavit before a notary public that the notice of intent was mailed on behalf of the owner shall conclusively establish the manner and time of the giving of the notice, but the affidavit, and the notice that the option will not be exercised shall be recorded with the registry of deeds or the registry district of the land court of the county in which the affected real property is located. Each notice of intention, notice of exercise of the option and notice that the option will not be exercised shall contain the name of the record owner of the land and description of the premises to be sold or converted adequate for identification thereof. Each such affidavit before a notary public shall have attached to it a copy of the notice of intention to which it relates. The notices of intention shall be deemed to have been duly mailed to the parties above specified if addressed to them in care of the keeper of records for the party in question.

(4) Upon notifying the owner in writing of its intention to pursue its first refusal option during such 120–day period, the department or its assignee shall have an additional 120 days, beginning on the date of the termination of the first refusal option period, to purchase the property. The time periods may be extended by mutual agreement between the department or its assignee and the owner of the property; provided, however, that any such extension agreed upon shall be recorded in the registry of deeds or the registry district of the land court of the county in which the affected real property is located. Within a reasonable time after request, the owner shall make available to the department or its assignee any information, which is reasonably necessary for the department to exercise its rights. The department or its assignee may purchase or acquire the property only for the purposes of preserving or providing affordable housing; provided, however, that such housing shall remain affordable for not less than 40 years. Such use restrictions shall be recorded in the registry of deeds or the registry district of the land court wherein the land lies.

(e) The owner of property subject to a UCH–TIF plan shall certify to the city or town the income of the families or occupants, upon initial occupancy, of the affordable housing units designated in the UCH–TIF agreement and such certification shall be provided to the department on an annual basis. If

the owner fails to provide certification or otherwise fails to comply with the UCH–TIF agreement, including failing to maintain the affordability of housing units assisted under this section, the city or town may place a lien on the property in the amount of the real estate tax exemptions granted pursuant to the UCH–TIF agreement for any year in which the owner is not in compliance with this subsection. If the city or town determines, with the approval of the department of housing and community development, that the owner is unlikely to come into compliance with the affordability requirements of subclause (3) of clause (v) of subsection (a), the city or town may place a lien on the property in the amount of the total real estate tax exemption granted pursuant to the UCH–TIF agreement. Any such lien shall be recorded in the registry of deeds or the registry district of the land court wherein the land lies.

Added by St.2003, c. 46, § 16, eff. July 31, 2003. Amended by St.2010, c. 240, § 77, eff. Aug. 1, 2010.

§ 60A. Manufacturing workforce training tax increment financing plan

(a) Notwithstanding any general or special law to the contrary, a city or town, by vote of its town meeting, town council or city council, with the approval of the mayor where required by law, on its own behalf or in conjunction with 1 or more cities or towns and pursuant to regulations issued by the director of workforce development and in consultation with the department of economic development, may adopt and implement a manufacturing workforce training tax increment financing plan, referred to as a MWT–TIF plan in this section, intended to encourage increased commercial growth of manufacturing facilities that have been located in such city or town for not less than 2 years. Any such MWT–TIF plan shall:

(i) designate 1 or more areas of such city or town as a manufacturing workforce training tax increment financing zone, referred to as a MWT–TIF zone in section, subject to the approval of the department of workforce development under regulations adopted by said department consistent with this section. Any MWT–TIF plan adopted by more than 1 city or town shall be contiguous areas of such cities or towns;

(ii) describe in detail all training, retraining and workforce repositioning contemplated for such MWT–TIF zone as of the date of adoption of the MWT–TIF plan that shall be eligible for the MWT–TIF;

(iii) authorize tax increment exemptions from property taxes, under clause Fifty-first of section 5 of chapter 59, for a specified term not to exceed 20 years, for any parcel of real property which is located in the MWT–TIF zone and for which an agreement has been executed with the owner of the parcel under clause (iv); provided, however, that the MWT–TIF plan shall specify the level of exemptions expressed as exemption percentages, not to exceed 100 per cent, to be used in calculating the exemptions for the parcel, and for personal property situated on that parcel, as provided under said clause Fifty-first of said section 5 of said chapter 59; provided, further, that the exemption for each parcel of real property shall be calculated using an adjustment factor for each fiscal year of the specified term equal to the product of the inflation factors for each fiscal year since the parcel first became eligible for such exemption pursuant to this clause; provided, further, that the inflation factor for each fiscal year shall be a ratio:

(a) the numerator of which shall be the total assessed value of all parcels of all commercial and industrial real estate that is assessed at full and fair cash value for the current fiscal year minus the new growth adjustment for the current fiscal year attributable to the commercial and industrial real estate as determined by the commissioner of revenue under paragraph (f) of section 21C of said chapter 59; and

(b) the denominator of which shall be the total assessed value for the preceding fiscal year of all the parcels included in the numerator, except that such ratio shall not be less than 1;

(iv) include executed agreements between such city or town and each eligible owner of a parcel of real property which is located in a MWT–TIF zone. Each such agreement shall include the following: (1) all material representations of the parties which served as a basis for the descriptions contained in the MWT–TIF plan in accordance with clause (ii) and which served as a basis for the granting of a MWT–TIF exemption; (2) any terms considered appropriate by the city or town relative to compliance with the MWT–TIF agreement including, but not limited to, that which shall constitute a default by the property owner and the remedies that shall be instituted between the parties for any such defaults, including an early termination of the agreement; (3) provisions requiring that 75 per cent of the eligible workforce shall receive training that is designed to retain employment in such city or town; (4) a detailed recitation of all other benefits

and responsibilities inuring to and assumed by the parties to such agreement; and (5) a provision that such agreement shall be binding upon subsequent owners of such parcel of real property;

(v) delegate to 1 board, agency or officer of the city or town the authority to execute agreements in accordance with clause (iv); and

(vi) be certified as an approved MWT–TIF plan by the economic assistance coordinating council established by section 3B of chapter 23A pursuant to regulations adopted by said council if the council finds, based on the information submitted in support of the MWT–TIF plan by the city or town and such additional investigation as the council shall make, and incorporate in its minutes, that the plan is consistent with the requirements of this section and shall further the public purpose of retaining or encouraging increased industrial and commercial manufacturing activity in the commonwealth. A city or town may at any time revoke its designation of a TIF zone and, as a consequence of such revocation, shall immediately cease the execution of any additional agreements pursuant to clause (iv). The board, agency or officer of the city or town authorized pursuant to clause (v) to execute agreements shall forward to the board of assessors a copy of each such agreement, together with a list of the parcels included therein. An executed and approved MWT–TIF shall be recorded in the registry of deeds or the registry district of the land court for the county wherein such land lies.

[There is no subsection (b).]

Added by St.2006, c. 123, § 35, eff. July 19, 2006. Amended by St.2010, c. 240, § 78, eff. Aug. 1, 2010; St.2010, c. 454, § 34, eff. Jan. 14, 2011.

CHAPTER 40A

ZONING

Selected section

Section

11. Notice requirements for public hearings; parties in interest defined; review of special permit petitions; recording copies of special permit and variance decisions.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 11. Notice requirements for public hearings; parties in interest defined; review of special permit petitions; recording copies of special permit and variance decisions

In all cases where notice of a public hearing is required notice shall be given by publication in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing. In all cases where notice to individuals or specific boards or other agencies is required, notice shall be sent by mail, postage prepaid. "Parties in interest" as used in this chapter shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the city or town, and the planning board of every abutting city or town. The assessors maintaining any applicable tax list shall certify to the permit granting authority or special permit granting authority the names and addresses of parties in interest and such certification shall be conclusive for all purposes. The permit granting authority or special permit granting authority may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or, in his stead, any successor owner of record who may not have received a notice by mail, and may order special notice to any such person, giving not less than five nor more than ten additional days to reply.

Publications and notices required by this section shall contain the name of the petitioner, a description of the area or premises, street address, if any, or other adequate identification of the location, of the area or premises which is the subject of the petition, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of action or relief requested if any. No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town.

Zoning ordinances or by-laws may provide that petitions for special permits shall be submitted to and reviewed by one or more of the following and may further provide that such reviews may be held jointly:—the board of health, the planning board or department, the city or town engineer, the conservation commission or any other town agency or board. Any such board or agency to which petitions are referred for review shall make such recommendations as they deem appropriate and shall send copies thereof to the special permit granting authority and to the applicant; provided, however, that failure of any such board or agency to make recommendations within thirty-five days of receipt by such board or agency of the petition shall be deemed lack of opposition thereto.

When a planning board or department is also the special permit granting authority for a special permit applicable to a subdivision plan, the planning board or department may hold the special permit public hearing together with a public hearing required by sections 81K to 81GG inclusive of chapter 41 and allow for the publication of a single advertisement giving notice of the consolidated hearing.

Upon the granting of a variance or special permit, or any extension, modification or renewal thereof, the permit granting authority or special permit granting authority shall issue to the owner and to the applicant if other than the owner a copy of its decision, certified by the permit granting authority or special permit granting authority, containing the name and address of the owner, identifying the land affected, setting forth compliance

with the statutory requirements for the issuance of such variance or permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the planning board and city or town clerk.

No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city or town clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, or that if it is a variance which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the certification of the city or town clerk stating the fact that the permit granting authority failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.

Added by St.1975, c. 808, § 3. Amended by St.1977, c. 829, §§ 4C to 4F; St.1979, c. 117; St.1987, c. 498, § 2; St.2006, c. 205, § 9, eff. Aug. 2, 2006; St.2008, c. 239, § 1, eff. Nov. 2, 2008.

CHAPTER 40Q

DISTRICT IMPROVEMENT FINANCING

Chapter 40Q of the General Laws was added by St.2003, c. 46, § 18.

Section

1. Definitions.
2. Development districts.
3. Tax increment revenue for financing development program.
4. Revenue bonds for financing development program.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Definitions

(a) As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

[Definition of "Adjustment factor" in subsection (a) applicable as provided by 2010, 240, Sec. 198. See 2010, 240, Sec. 206.]

"Adjustment factor", for each fiscal year of the term of a given development program, the product of the inflation factors for each fiscal year subsequent to the first fiscal year immediately following the base date.

[Definition of "Base date" in subsection (a) applicable as provided by 2010, 240, Sec. 198. See 2010, 240, Sec. 206.]

"Base date", the last assessment date of the real property tax immediately preceding the creation of the district.

"Captured assessed value", the valuation amount by which the current assessed value of an invested revenue district exceeds the original assessed value of the district. If the current assessed value is equal to or less than the original, there is no captured assessed value.

"Development district", a specified area within the corporate limits of a city or town which has been designated as provided in section 2 and which is to be developed by the city or town under a development program.

"Development program", a statement of means and objectives designed to improve the quality of life, the physical facilities and structures and the quality of pedestrian and vehicular traffic control and transportation within a development district. Means and objectives designed to increase or improve residential housing, both affordable and market rate, may also be addressed within a district and shall be considered part of a development program. The statement shall include:

(1) a financial plan;

(2) a complete list of public facilities to be constructed;

(3) the use of private property;

(4) plans for the relocation of persons displaced by the development activities;

(5) plans, if any, for the development of housing, both affordable and market rate;

(6) the proposed regulations and facilities to improve transportation;

(7) the proposed operation of the district after the planned capital improvements are completed; and

[Clause (8) of the definition of "Development program" in subsection (a) applicable as provided by 2010, 240, Sec. 198. See 2010, 240, Sec. 206.]

(8) the duration of the program which shall not exceed the longer of: (i) 30 years from the date of designation of the district; or (ii) 30 years from project stabilization, as defined in the development program.

"Financial plan", a statement of the costs and sources of revenue required to accomplish the development programs which shall include: (1) cost estimates for the development program; (2) the amount of indebtedness to be incurred; and (3) sources of anticipated capital.

[Definition of "Inflation factor" in subsection (a) applicable as provided by 2010, 240, Sec. 198. See 2010, 240, Sec. 206.]

"Inflation factor", a ratio: (1) the numerator of which shall be the total assessed value of all parcels of residential, commercial and industrial real estate that are assessed at full and fair cash value for the current fiscal year minus the new growth adjustment factor for the current fiscal year attributable to the residential, commercial and industrial real estate as determined by the commissioner of

revenue under paragraph (f) of section 21C of chapter 59; and (2) the denominator of which shall be the total assessed value for the preceding fiscal year of all the parcels included in the numerator; provided, however, the ratio shall not be less than 1; provided, further, that if the proposed Invested Revenue District does not include residential property, the assessed value attributable to residential property shall not be included in either the numerator or the denominator in calculating the inflation factor.

"Invested revenue district", a type of development district or portion of a district that uses tax increment financing under section 3.

[Definition of "Invested revenue district development program" in subsection (a) applicable as provided by 2010, 240, Sec. 198. See 2010, 240, Sec. 206.]

"Invested revenue district development program", a statement which, in addition to the information required for a development program, shall also include: (1) estimates of the captured assessed value of the district; (2) a projection of the tax revenues to be derived from the invested revenue district in the absence of a development program; (3) the method of calculating the tax increment together with any provisions for adjustment of the method of calculation; (4) the board or officer of the city or town responsible for calculating the tax increment; (5) a statement as to whether the issuance of bonds contemplated under this chapter shall be general or special obligation bonds; (6) the portion of the captured assessed value to be applied to the development program and resulting tax increments in each year of the program; (7) a statement of the estimated impact of tax increment financing on all taxing jurisdictions in which the district is located; and (8) if applicable, a statement of the city or town electing that the original assessed value not be increased by the adjustment factor.

[Definition of "Original assessed value" in subsection (a) applicable as provided by 2010, 240, Sec. 198. See 2010, 240, Sec. 206.]

"Original assessed value", the aggregate assessed value of the invested revenue district as of the base date; provided, however, that if the city or town has not included an election statement in its investment district development program, the original assessed value in any year shall be equal to the original assessed value as of the base date multiplied by the adjustment factor for that fiscal year.

"Project", a project to be undertaken in accordance with the development program.

"Project costs", any expenditure made or estimated to be made or monetary obligations incurred or estimated to be incurred by the city or town which are listed in a project plan as costs of improvements including, but not limited to, public works, acquisition, construction or rehabilitation of land or improvements for sale or lease to residential, commercial or industrial users within a development district plus any costs incidental to those improvements, reduced by any income, special assessments or other revenues, other than tax increments, received or reasonably expected to be received by the city or town in connection with the implementation of this plan.

Project costs shall include, but not be limited to:—

(1) "administrative costs", any reasonable charges for the time spent by city or town employees in connection with the implementation of a project plan;

(2) "capital costs", the actual costs of the construction of public works or improvements, new buildings, structures and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures; the acquisition of equipment; and the grading and clearing of land;

(3) "discretionary costs", those payments made by the appropriate body of a city or town that in its discretion are found to be necessary or convenient to the creation of development districts or the implementation of project plans.

(4) "financing costs", including, but not be limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of that indebtedness because of the redemption of the obligations before maturity;

(5) "improvement costs", those costs associated with developing new employment opportunities, promoting public events, advertising cultural, educational and commercial activities, providing public safety, establishing and maintaining administrative and managerial support and such other services as are necessary or appropriate to carry out the development program;

(6) "organizational costs", all reasonable costs relating to the conduct of environmental impact and other studies and informing the public about the creation of development districts and the implementation of project plans;

(7) "professional service costs", including, but not limited to, those costs incurred for architectural, planning, engineering and legal advice or services;

(8) "real property assembly costs", any deficit incurred resulting from the sale or lease by the city or town, as lessor, of real or personal property within a development district for consideration which is less than its cost to the city or town;

(9) "relocation costs", all reasonable relocation payments made pursuant to a condemnation;

(10) "training costs", costs associated with providing skills, development and training for employees of businesses within the development district; provided, however, that these costs shall not exceed 20 per cent of the total project costs and shall be designated as training funds within 5 years of the issuance of bonds pursuant to this chapter for the project or the designation of the district, whichever occurs later; and

(11) "water and sewer line costs", which shall include the costs related to the construction or alteration of sewage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines or amenities on streets or the rebuilding or expansion thereto so long as required by the project plan for a development district, whether or not the construction, alteration, rebuilding or expansion is within the development district;

Project costs shall not include the cost of a building or a portion of a building used predominantly for the general conduct of government, such as a city hall, courthouse, jail, police or fire station or other state or local government office buildings.

"Project revenues", receipts of a city or town with respect to a project including, without limitation, tax increments, investment earnings and proceeds of insurance or disposition of property.

"Tax increment", that portion of all real and personal property taxes assessed by a city or town upon the captured assessed value of property in the development district. The portion of the tax levy attributable to the increased valuation after the base date shall be calculated using the same classification factors as were used as of the base date, or without classification factors, if property was not classified for tax purposes as of the base date. If the base date is earlier than the date as of which the commissioner of revenue makes the certification required by subsection (c) of section 2A of chapter 59, the project plan may provide for such further adjustment in calculating the tax increment as may be deemed appropriate to reflect changes of practice after the base date with respect to the valuation of property in order to achieve assessment at full and fair cash valuation.

[There is no subsection (b).]

Added by St.2003, c. 46, § 18, eff. July 31, 2003. Amended by St.2010, c. 240, § 99 to 104, eff. Aug. 1, 2010.

§ 2. Development districts

(a) Notwithstanding any general or special law to the contrary, any city or town by vote of its town meeting, town council or city council with the approval of the mayor where required by law may designate development districts within the boundaries of the city or town provided, however, that: (1) a development district may consist of 1 or more parcels or lots of land, whether or not contiguous, or 1 or more buildings or structures, whether or not adjacent, on 1 or more parcels of land, provided that the total area of all development districts shall not exceed 25 per cent of the total area of a city or town; and provided that the boundaries of a development district may be altered only after meeting the requirements for adoption under this subsection; (2) the development district has been certified as an approved development district by the economic assistance coordinating council established in section 3B of chapter 23A and pursuant to regulations adopted by said council. The economic assistance coordinating council shall find, based on the information submitted to it in support of the designation of the development district by the city or town and additional investigation as the economic assistance coordinating council shall make, and incorporate into its minutes, that the designation of the development district is consistent with the requirements of this section and will further the public purpose of encouraging increased residential, industrial and commercial activity in the commonwealth.

(b) The city or town shall adopt a development program for each development district. The program shall be adopted at the same time as the district, as part of the district adoption proceedings or, if at a different time, in the same manner as

adoption of the district, with the same certification requirements of subsection (a). Once approved, the program shall be altered or amended only after meeting the requirements for adoption.

(c) Within development districts and consistent with the development program, the city or town may acquire, construct, reconstruct, improve, preserve, alter, extend, operate, maintain or promote development intended to meet the objectives of the development program. In addition to the powers granted by any other law, for the purpose of carrying on a project as authorized by this chapter, a city or town may:

(1) incur indebtedness as hereinafter provided and pledge tax increments and other project revenues for repayment thereof;

(2) create a department, designate an existing department, board officer, agency, municipal housing or redevelopment authority of the city or town or enter into a contractual agreement with a private entity to administer the activities authorized by this chapter;

(3) make and enter into all contracts and agreements necessary in order to carry out the development program;

(4) receive from the federal government or the commonwealth loans or grants for, or in aid of, a project and receive contributions from any other source to defray project costs;

(5) purchase or acquire by eminent domain pursuant to chapter 79 or chapter 80A, insofar as those laws may be applicable, and pursuant to all preliminary requirements prescribed by law, such property or interests therein within a district as the city or town may deem necessary in order to carry out the development program; provided, however, that any taking of property by eminent domain for any purpose for which the taking by the city or town could not be made in the absence of this chapter shall be authorized by a two-thirds vote as defined in section 1 of chapter 44;

(6) make relocation payments to persons, businesses or organizations that may be displaced as a result of carrying out the development program;

(7) clear and improve property acquired by it pursuant to the development program and construct public facilities thereon, or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration or repair of such property;

(8) cause parks, playgrounds or schools, water or sewer drainage facilities or any other public improvements that it is otherwise authorized to undertake, to be laid out, constructed or furnished in connection with the development program;

(9) lay out, construct, alter, relocate, change the grade of, make specific repairs upon or discontinue public ways and sidewalks in or adjacent to the development district;

(10) cause private ways, sidewalks, ways for vehicular travel and similar improvements to be constructed within the development district for the particular use of the development district or those dwelling or working therein;

(11) adopt ordinances or by-laws under section 5 of chapter 40A, or repeal or modify the ordinances or by-laws or establish exceptions to existing ordinances and by-laws, regulating the design, construction and use of buildings;

(12) sell, mortgage, lease as lessor, transfer or dispose of any property or interest therein acquired by it pursuant to the project plan for development, redevelopment or rehabilitation in accordance with the development program;

(13) invest project revenue as hereinafter provided; and

(14) do all things reasonably necessary or convenient to carry out the powers granted in this chapter.

Added by St.2003, c. 46, § 18, eff. July 31, 2003.

§ 3. Tax increment revenue for financing development program

(a) The city or town may retain all or part of the tax increment of an invested revenue district for the purpose of financing the development program. The amount of tax increment to be retained shall be determined by designating the amount of captured assessed value to be retained. When a development program for an invested revenue district is adopted, the city or town shall adopt a statement of the percentage of captured assessed value to be retained in accordance with the development program. The statement of percentage may establish a specific percentage or percentages or may describe a method or formula for determination of the percentage. The assessor shall certify the amount of the captured assessed value to the city or town each year.

(b) On or after the formation of an invested revenue district, the assessor of the city or town in

which it is located shall, on request of the city or town, certify the original assessed value of the taxable property within the boundaries of the invested revenue district. Each year, after the formation of an invested revenue district, the assessor of the city or town shall certify the amount by which the assessed value has increased or decreased from the original value.

(c) If a city or town has elected to retain all or a percentage of the retained captured assessed value under subsection (a), the city or town shall:

(1) establish a development program fund that consists of: (i) a development sinking fund account that is pledged to and charged with the payment of the interest and principal as the interest and principal fall due and the necessary charges of paying interest and principal on any notes, bonds or other evidences of indebtedness that were issued to fund or refund the costs of the development program fund; and (ii) a project cost account that is pledged to and charged with the payment of project costs as outlined in the financial plan and paid in a manner other than as described in subclause (i).

(2) set aside annually all tax increment revenues on retained captured assessed values and deposit all such revenues in the appropriate development program fund account in the following priority:

(i) to the development sinking fund account, an amount sufficient, together with estimated future revenues to be deposited to the account and earnings on the amount, to satisfy all annual debt service on bonds and notes issued under section 4 and the financial plan; and

(ii) to the project cost account, an amount sufficient, together with estimated future revenues to be deposited to the account and earnings on the amount, to satisfy all annual project costs to be paid from the account;

(3) to be permitted to make transfers between development program fund accounts as required; provided, however, that the transfers shall not result in a balance in the development sinking fund account that is insufficient to cover the annual obligations of that account; and

(4) annually return to the general fund of the city or town any tax increment revenue in excess of those estimated to be required to satisfy the obligations of the development sinking fund account.

Added by St.2003, c. 46, § 18, eff. July 31, 2003.

§ 4. Revenue bonds for financing development program

(a) A city or town may, by a two-thirds vote as defined in section 1 of chapter 44, authorize, issue and sell bonds including, but not limited to, general obligation or revenue bonds or notes, to finance all project costs needed to carry out the development program within a development district. Without limiting the generality of the foregoing, such bonds may be issued for the payment of project costs, which may include interest before and during the carrying out of a project and, for a reasonable time thereafter, such reserves as may be required by any agreement securing the bonds and all other expenses incidental to planning, carrying out and financing the project.

(b) The bonds of each issue shall be dated and may be made redeemable before maturity with or without premium. Subject to the authorizing vote, the officers authorized to sell the bonds shall determine: the date of the bonds which shall mature within 30 years from their respective dates; their denomination; the place of payment of the principal and interest, which may be at a bank or trust company within or without the commonwealth; their interest rate; maturity; redemption privileges, if any, and the form and other details of the bonds. Notwithstanding a municipal charter or any general or special law to the contrary, bonds issued hereunder may provide for annual or more frequent installments of principal in equal, diminishing or increasing amounts with the first installment of principal to be due at any time within 5 years after the date of issuance of the bonds and, subject to the authorizing vote, may provide for such rates of interest as the officers authorized to sell the bonds shall deem proper, including rates variable from time to time as determined by such index, banker's loan rate or other method as may be specified in such bond. The bond shall be signed by the mayor or city manager as the case may be of a city or by a majority of the board of selectmen or town council of a town either manually or by facsimile thereof. Any coupons attached thereto shall bear the facsimile signature of the city or town treasurer.

(c) If an officer whose signature, or a facsimile of whose signature, shall appear on any bonds, coupons or notes issued under this chapter shall cease to be such officer before the delivery thereof, his signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery.

(d) The bonds shall be issued in registered form. Subject to the authorizing vote, the officers authorized to sell the bonds may sell the bonds in such manner, either at public or private sale, and for such price as they may determine shall best effect the purposes of this chapter.

(e) Before the preparation of definitive bonds, the city or town may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. Provision may be made for the replacement of any bonds that shall have become mutilated or shall have been destroyed or lost.

(f) Bonds or notes issued hereunder may be secured in whole or in part by letters or lines of credit or other credit facilities. An insurance letter or line of credit or credit facility may provide for reimbursement to be made over a period of time, not to exceed 2 years, beyond the maturity date of the bonds or notes so secured.

(g) In the discretion of the officers authorized to sell the bonds but subject to the vote authorizing the bonds, bonds issued hereunder may be secured by trust agreements between the city or town and a corporate trustee, which may be a trust company or bank having the powers of a trust company within or without the commonwealth. A trust agreement hereunder shall be in such form and executed in such manner as may be determined by such officers. A trust agreement may pledge or assign project revenue, in whole or in part, and may provide that the owner or holder of bonds issued thereunder may have a lien or mortgage on a facility acquired, improved or constructed with the proceeds of the tax increment bonds, may contain provisions for protecting and enforcing the rights, security and remedies of the bondholders as may be reasonable and proper and not in violation of the law including, without limiting the generality of the foregoing: provisions defining defaults and providing for remedies in the event thereof, which may include the acceleration of maturities, and covenants setting forth the duties of, and limitations on, the city or town in relation to carrying out and otherwise administering the projects; the custody, safeguarding, investment and application of project revenues; the issuance of additional bonds hereunder; the determination of tax increments; the fixing of fees and charges, if any, in relation to the projects; the collection of project revenues; the use of any surplus bond proceeds; the establishment of reserve and the replacement of bonds or coupons which shall become mutilated, destroyed or lost. Subject to this chapter, moneys subject to the trust agreement shall be held, invested and applied as provided therein, but moneys not deposited in trust with a corporate trustee shall be in the custody of the city or town treasurer.

(h) A bank or trust company may act as a depository or trustee of proceeds of bonds or of other monies under a trust agreement and furnish such indemnifying bonds or pledge securities required by the trust agreement. Any such trust agreement or resolution may set the rights and remedies of the bondholders and of the trustees and may restrict the individual right of action by a bondholder. All expenses incurred in carrying out the trust agreement or resolution may be treated as operating expenses.

(i) Notwithstanding chapter 106 or any other general or special law to the contrary: (1) any pledge hereunder shall be valid and binding and shall be deemed continuously perfected from the time it is made; (2) no filing shall be required under said chapter 106 or otherwise; (3) unless otherwise provided in the financing instruments, a pledge of project revenues shall be deemed to include a pledge of any accounts or general intangibles from which such revenues are derived whether existing at the time of the pledge or thereafter acquired by the city or town and the proceeds of such accounts or general intangibles; and (4) the pledged project revenue accounts and general intangibles shall be subject to the lien of the pledge without delivery or segregating and the lien of the pledge shall be valid and binding against all parties having claims in contract, tort or otherwise against the city or town.

(j) A pledge of project revenues under this chapter shall constitute a sufficient appropriation thereof for the purposes of any provision for appropriation and such revenues may be applied as required by the pledge without further appropriation. Notwithstanding this subsection, administrative expenses shall be subject to appropriation.

(k) In anticipation of the issuance of bonds under this chapter and subject to the vote authorizing the bonds, the officers authorized to sell bonds may without further authorization issue temporary notes. The notes may be secured as in the case of bonds, and except as otherwise provided in this section, subsections (i), (k), (*l*) and (n) referring to bonds shall also be deemed to refer to the notes. The notes shall not require the seal of the city or

town or a facsimile thereof. The notes shall be payable within 2 years from their respective dates, but the principal of and interest on notes issued for a short period may be refunded from time to time by the issuance of other notes maturing within 2 years from the original date of issuance of the indebtedness being refunded.

(*l*) A city or town may, when authorized by a majority vote as defined in section 1 of chapter 44, issue refunding bonds for the purpose of paying any of its bonds issued hereunder at maturity or upon acceleration of redemption. The refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the city or town deems to be in the public interest. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of the bonds, the expense of issuance of the refunding bonds, the expenses of redeeming the bonds being refunded and such reserves for debt service or other purposes from the proceeds of such refunding bonds as may be required by an agreement securing the bonds. The issuance of refunding bonds, the maturities and other details thereof, the security thereof, the rights of holders thereof and the rights, duties and obligations of the city or town with respect thereto shall be governed by this chapter relating to the issuance of bonds other than refunding bonds insofar as the same may be applicable.

(m) The bonds and notes issued under this chapter shall not at any time be included in the debt of the city or town for the purpose of ascertaining its legal borrowing capacity. Except as otherwise provided in this chapter, such bonds and notes shall not be subject to chapter 44.

(n) Subject to an agreement securing bonds or notes issued under this chapter, the proceeds of bonds or notes pledged for tax increments and other project revenues may be deposited or invested in such investments as may be lawful for fiduciaries in the commonwealth.

(*o*) All project revenues received pursuant to this chapter shall be deemed to be trust funds to be held and applied solely as provided in this chapter.

(p) A holder of bonds or notes issued under this chapter, or of any of the coupons appertaining thereto, and the trustee under any trust agreement securing the same, except to the extent the rights herein given may be restricted by an agreement securing the same, may bring suit upon the bonds, notes or coupons and may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce all rights under the laws of the commonwealth or granted under this chapter or under any such agreement and may enforce or comply with the performance of all duties required by this chapter or by an agreement to be performed by the city or town or by any officer thereof.

(q) Bonds and notes issued under this chapter shall be securities in which insurance companies, trust companies, banking associations, savings banks, cooperative banks, investment companies, executors, trustees and other fiduciaries and all other persons whatsoever who are or may hereafter be authorized to invest in bonds or notes or other obligations of a similar nature may properly and legally invest funds, including capital deposits or other funds in their control and belonging to them. The debt obligations shall be securities which may properly and legally be deposited with and received by a state or municipal office, agency or political subdivision of the commonwealth for any purpose for which the deposits of bonds or other obligations of the commonwealth may now or hereafter be authorized by law.

(r) Notwithstanding this chapter or any recitals in any bonds or notes issued under this chapter, all bonds and notes shall be deemed to be investment securities under chapter 106.

(s) The bonds and notes issued under this chapter, their transfer and the income therefrom, including any profits made on the sale thereof, shall be at all times free from taxation within the commonwealth.

Added by St.2003, c. 46, § 18, eff. July 31, 2003.

CHAPTER 40R

SMART GROWTH ZONING AND HOUSING PRODUCTION

Chapter 40R of the General Laws was added by St.2004, c. 149, § 92.

Selected sections

Section

1. Purpose.

11. Application for approval of projects; approval; review; complaint; bond; jurisdiction and priority; validity and effect of project approval.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Purpose

It is the purpose of this chapter to encourage smart growth and increased housing production in Massachusetts. Smart growth is a principle of land development that emphasizes mixing land uses, increases the availability of affordable housing by creating a range of housing opportunities in neighborhoods, takes advantage of compact design, fosters distinctive and attractive communities, preserves open space, farmland, natural beauty and critical environmental areas, strengthens existing communities, provides a variety of transportation choices, makes development decisions predictable, fair and cost effective and encourages community and stakeholder collaboration in development decisions.

Added by St.2004, c. 149, § 92, eff. July 1, 2004.

§ 11. Application for approval of projects; approval; review; complaint; bond; jurisdiction and priority; validity and effect of project approval

(a) A city or town may incorporate provisions within the smart growth district zoning ordinance or by-law that prescribe contents of an application for approval of a project. The ordinance or by-law may require the applicant to pay for reasonable consulting fees to provide peer review of the applications for the benefit of the approving authority. Such fees shall be held by the municipality in a separate account and used only for expenses associated with the review of the development application by outside consultants and any surplus remaining after the completion of such review, including any interest accrued, shall be returned to the applicant forthwith. The smart growth zoning district ordinance or by-law may provide for the referral of the plan to municipal officers, agencies or boards other than the approving authority for comment. Any such board, agency or officer shall provide any comments within 60 days of its receipt of a copy of the plan and application for approval.

(b) An application to an approving authority for approval under a smart growth zoning ordinance or by-law shall be governed by the applicable zoning provisions in effect at the time of the submission, while the plan is being processed, during the pendency of any appeal and for 3 years after approval. If an application is denied, the zoning provisions in effect at the time of the application shall continue in effect with respect to any further application filed within 2 years after the date of the denial except as the applicant may otherwise choose.

(c) An application for approval under this section shall be filed by the applicant with the city or town clerk and a copy of the application including the date of filing certified by the town clerk shall be filed forthwith with the approving authority. The approving authority shall hold a public hearing for which notice has been given as provided in section 11 of chapter 40A. The decision of the approving authority shall be made, and a written notice of the decision filed with the city or town clerk, within 120 days of the receipt of the application by the city or town clerk. The required time limits for such action may be extended by written agreement between the applicant and the approving authority, with a copy of such agreement being filed in the office of the city or town clerk. Failure of the approving authority to take action within said 120 days or extended time, if applicable, shall be deemed to be an approval of the plan. The applicant who seeks approval of a plan by reason of the failure of the approving authority to act within such time prescribed, shall notify the city or town clerk, in writing within 14 days from the expiration of said 120 days or extended time, if applicable, of such approval and that notice has been sent by the applicant to parties in interest. The applicant shall send such notice to parties in interest by mail and

each such notice shall specify that appeals, if any, shall be made pursuant to this section and shall be filed within 20 days after the date the city or town clerk received such written notice from the applicant that the approving authority failed to act within the time prescribed.

(d) The approving authority shall issue to the applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the city or town clerk and that all plans referred to in the decision are on file with the approving authority. If 20 days have elapsed after the decision has been filed in the office of the city or town clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the city or town clerk shall so certify on a copy of the decision. If the plan is approved by reason of the failure of the approving authority to timely act, the clerk shall make such certification on a copy of the application. A copy of the decision or application bearing such certification shall be recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.

(e) The project shall be approved by the approving authority subject only to those conditions that are necessary: (1) to ensure substantial compliance of the proposed project with the requirements of the smart growth zoning district ordinance or by-law; or (2) to mitigate any extraordinary adverse impacts of the project on nearby properties. An application may be denied only on the grounds that: (i) the project does not meet the conditions and requirements set forth in the smart growth zoning district ordinance or by-law; (ii) the applicant failed to submit information and fees required by the ordinance or by-law and necessary for an adequate and timely review of the design of the project or potential project impacts; or (iii) it is not possible to adequately mitigate significant adverse project impacts on nearby properties by means of suitable conditions.

(f) Any court authorized to hear appeals under section 17 of chapter 40A shall be authorized to hear an appeal from a decision under this section by a party who is aggrieved by such decision. Such appeal may be brought within 20 days after the decision has been filed in the office of the city or town clerk. Notice of the appeal, with a copy of the complaint shall be given to such city or town clerk so as to be received within such 20 days. Review shall be based on the record of information and plans presented to the approving authority. To avoid delay in the proceedings, instead of the usual service of process, the plaintiff shall within 14 days after the filing of the complaint, send written notice thereof, with a copy of the complaint, by delivery or certified mail to all defendants, including the members of the approving authority, and shall within 21 days after the entry of the complaint file with the clerk of the court an affidavit that such notice has been given. If no such affidavit is filed within such time, the complaint shall be dismissed.

(g) A complaint by a plaintiff challenging the approval of a project under this section shall allege the specific reasons why the project fails to satisfy the requirements of this chapter or other applicable law and allege specific facts establishing how the plaintiff is aggrieved by such decision. The approving authority's decision in such a case shall be affirmed unless the court concludes the approving authority abused its discretion under subsection (e) in approving the project. The applicant and all members of the approving authority shall be named as defendant parties.

(h) A plaintiff seeking to reverse approval of a project under this section shall post a bond in an amount to be set by the court that is sufficient to cover twice the estimated: (i) annual carrying costs of the property owner, or a person or entity carrying such costs on behalf of the owner for the property, as may be established by affidavit; plus (ii) an amount sufficient to cover the defendant's attorneys fees, all of which shall be computed over the estimated period of time during which the appeal is expected to delay the start of construction. The bond shall be forfeited to the property owner in an amount sufficient to cover the property owner's carrying costs and legal fees less any net income received by the plaintiff from the property during the pendency of the court case in the event a plaintiff does not substantially prevail on its appeal.

(i) An applicant for plan approval who appeals from a project denial or conditional approval shall identify in its complaint the specific reasons why the approving authority's decision fails to satisfy requirements of this chapter or other applicable

law. The approving authority shall have the burden of justifying its decision by substantial evidence in the record.

(j) The land court department, the superior court department and the housing court department shall have jurisdiction over an appeal under this section and shall give priority to such an appeal.

(k) The first paragraph of section 16 of chapter 40A shall not apply to applications for projects within a smart growth zoning district.

(*l*) A project approval shall remain valid and shall run with the land indefinitely provided that construction has commenced within 2 years after the decision is issued, which time shall be extended by the time required to adjudicate any appeal from such approval and which time shall also be extended if the project proponent is actively pursuing other required permits for the project or there is other good cause for the failure to commence construction, or as may be provided in an approval for a multi-phase project.

Added by St.2004, c. 149, § 92, eff. July 1, 2004.

CHAPTER 40S

SMART GROWTH SCHOOL COST REIMBURSEMENT

Chapter 40S of the General Laws was added by St.2005, c. 141, § 1.

Section

1. Definitions.
2. Amount of smart growth school cost reimbursement; addition to districts' required net school spending.
3. Smart growth address list; duties of reporting officer; assessor's list; calculation of reimbursement amount; regulations.
4. Annual report on cost and effectiveness of reimbursement program.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Definitions

As used in this chapter, the following words shall have the following meanings:—

"Additional chapter 70 aid", for each municipality, an amount calculated by the department of education equal to the actual increase in chapter 70 aid payments, including, but not limited to, foundation aid increases and minimum aid increases, that is attributable to the number of each municipality's eligible students from the school district. In the case of a regional school district, the amount of additional chapter 70 aid in the region shall be apportioned among member communities proportionally based upon the number of eligible students from each member municipality. For any municipality with eligible students from more than 1 school district, additional chapter 70 aid shall be the sum of the additional chapter 70 aid at the municipal school district plus the municipality's share of additional chapter 70 aid at each district of which the municipality is a member.

"Average actual net school spending per student", for each school district, the actual net school spending per pupil, as defined by and reported to the department of education, for the immediately preceding fiscal year.

"Division", the division of local services within the department of revenue.

"Education percentage", the average across all communities in the commonwealth of total education expenditures in relation to total municipal expenditures as certified at the end of the preceding fiscal year by the department of revenue. This percentage shall be the total actual net school spending of all districts as defined by the department of education divided by the sum of total General Fund municipal spending and regional school district aid.

"Eligible student", a child living in a new smart growth development that is enrolled as of the prior year in a district or charter school in kindergarten through grade 12, attends a residential or other school pursuant to special education requirements, attends pre-kindergarten or post 12th grade sessions pursuant to special education requirements, or attends a school district through the so-called school choice program, established under section 12B of chapter 76, or a similar program.

"Local smart growth excise tax revenues", for each municipality the total excise taxes for the subject year on vehicles garaged at a new smart growth development, as calculated by the division.

"Local smart growth property tax revenues", for each municipality, the product of the local levy rate times the amount of assessed valuation due to new smart growth development as certified by the commissioner of revenue, as calculated by the division.

"Local smart growth revenues for education", for each municipality, the product of the education percentage times the sum of local smart growth property tax revenues plus local smart growth excise tax revenues, each for the preceding fiscal year.

"New smart growth development", any new residential or commercial development, including the substantial redevelopment of existing properties, subject to the payment of local property taxes that: (a) occurs in a smart growth zoning district after the adoption of such zoning by the community, and (b) is permitted under the provisions of the smart growth zoning district. A redevelopment shall be considered substantial if its cost exceeds 50 per cent of the building's pre-renovation assessed value or if it constitutes a change in use from nonresidential to residential.

"Smart growth zoning district", a zoning district adopted by a community and approved by the

department of housing and community development which is eligible, and which remains eligible for density bonus payments under chapter 40R.

"Total education cost for eligible students", for each municipality, the product of the total number of eligible students in the prior fiscal year times the average actual net school spending per student as calculated by the department of education. This calculation shall first be made separately for each school district attended by eligible students, and the results of such calculations shall then be summed.

Added by St.2005, c. 141, § 1, eff. Feb. 20, 2006.

§ 2. Amount of smart growth school cost reimbursement; addition to districts' required net school spending

Subject to appropriation, for each fiscal year commencing with fiscal year 2008, any city or town that has established 1 or more smart growth zoning districts shall receive smart growth school cost reimbursement from the commonwealth. This reimbursement shall be equal to the positive difference, if any, between: (i) total education cost for eligible students, and (ii) the sum of local smart growth revenues for education plus additional chapter 70 aid. The department of education shall add the smart growth school cost reimbursement amounts to each district's required net school spending, as defined in chapter 70. For purposes of the net school spending calculation, the department shall allocate a municipality's smart growth school cost reimbursement among the districts to which it belongs in proportion to the number of eligible students from the municipality attending each district.

Added by St.2005, c. 141, § 1, eff. Feb. 20, 2006.

§ 3. Smart growth address list; duties of reporting officer; assessor's list; calculation of reimbursement amount; regulations

(a) Upon certifying and approving a zoning district as a smart growth zoning district under chapter 40R, the department of housing and community development shall provide a list of all addresses of new smart growth development within each smart growth zoning district, in this chapter called the smart growth address list, to the municipality, the department of education, the division of local services within the department of revenue, and the registry of motor vehicles.

(b) The chief executive officer of every municipality with a smart growth zoning district shall appoint a smart growth reporting officer who shall be responsible for collecting all relevant data and transmitting it to the appropriate state agencies in a timely fashion. The reporting officer shall transmit the smart growth address list to the superintendent of schools of the municipal school district and to the superintendent of each district or charter school in which local residents were enrolled as of October 1. Superintendents shall provide to the reporting officer a list of each eligible student from the school. The reporting officer shall compile these data into a single list of eligible students, in this chapter called the eligible student list, including the name, address and school district of each eligible student, and transmit the eligible student list to the department of education. The reports and list shall be made in a manner and form to be prescribed by the commissioner of education.

(c) Upon receipt of the eligible student list, the department of education shall certify that all students listed are living in new smart growth development within a smart growth zoning district. Upon such certification, the department shall calculate the additional chapter 70 aid amount, and the total education cost for eligible students and shall transmit the calculation to the division of local services and to the municipal reporting officer.

(d) The reporting officer shall provide the smart growth address list to the municipality's assessors, who shall be responsible for providing the reporting officer with a compilation of all commercial and residential development comprising new smart growth development in the smart growth zoning district and all vehicles garaged therein. Said compilation shall contain the addresses of each parcel within the zoning district, the classification code for each parcel, the assessed value of the parcel, the number of units at each address, the number of vehicles garaged at each address, and the excise tax paid on each vehicle. The reporting officer shall transmit the assessors' list to the registry of motor vehicles and the division of local services. The reports and lists required by this paragraph shall be made in manner and form to be prescribed by the commissioner of revenue.

(e) Upon receipt of the assessors' list, the registrar of motor vehicles shall verify the number of vehicles and the excise tax paid on these vehicles and provide that verification to the division of local services. The division shall use these lists to calcu-

late local smart growth excise tax revenues, local smart growth property tax revenues, and local smart growth revenues for education.

(f) Upon receipt of all data and calculations required by this section, the division of local services shall calculate the smart growth school cost reimbursement pursuant to section 2. Subject to appropriation, the commissioner of revenue shall make a single payment to each municipality for the amount of its smart growth school cost reimbursement; but if the appropriation is insufficient to fully fund the cost of the reimbursement, the division shall calculate the percentage of each municipality's reimbursement as a share of the statewide reimbursement, and pro-rate each municipality's reimbursement proportionally.

(g) The commissioner of revenue, in consultation with the commissioner of education, the director of housing and community development, and the registrar of motor vehicles, shall adopt all regulations necessary to carry out this chapter.

Added by St.2005, c. 141, § 1, eff. Feb. 20, 2006.

§ 4. Annual report on cost and effectiveness of reimbursement program

The commissioners of revenue and education, the director of housing and community development and the registrar of motor vehicles shall annually report on the cost and effectiveness of the reimbursement program. This report shall include, but not be limited to, the number of municipalities which have adopted the provisions of chapters 40R and 40S, the number of smart growth zoning districts in the commonwealth, the number of eligible students per municipality, the number of municipalities receiving the smart growth school cost reimbursement, and the total reimbursement and per pupil reimbursement provided to each municipality. They shall provide the report to the chairs of the house and senate committees on ways and means, the house and senate chairs of the joint committee on housing, the house and senate chairs of the joint committee on community development and small business, the house and senate chairs of the joint committee on education, and the secretary of administration and finance.

Added by St.2005, c. 141, § 1, eff. Feb. 20, 2006.

CHAPTER 40U

MUNICIPAL FINES

Chapter 40U of the General Laws was added by St.2010, c. 26.

Section
1. Definitions.
2. Effective date of chapter in municipality.
3. Procedures for payment of municipal fines; power to revoke or rescind.
4. Procedures for payment of fines determined by majority vote.
5. Sidewalk snow and ice removal; penalties for non-compliance; standards for clearance.
6. Municipal hearing officer.
7. Administrative disposition of noncriminal violations.
8. Violation notices.
9. Affixing of violation tags.
10. Retention and delivery of violation notice copies.
11. Schedule of fines for violations.
12. Return of notice of violation; payment; request for hearing; additional charges for non-payment.
13. Challenge to validity of violation notice.
14. Written request for hearing; time and location of hearing.
15. Appeal of decision of municipal hearing officer.
16. Effect of failure to pay, request hearing or appear.
17. Payments of fines, penalties or assessments to the general fund of municipality.
18. Local ordinances and by-laws superseded.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Definitions

"Municipal hearing officer", a person appointed by the appointing authority of a municipality to conduct hearings of alleged code violations pursuant to this chapter.

"Unpaid charge", an unpaid fine incurred as a result of a violation of a rule, regulation, order, ordinance or by-law regulating the housing, sanitary or municipal snow and ice removal requirement.

Added by St.2010, c. 26, eff. May 11, 2010.

§ 2. Effective date of chapter in municipality

This chapter shall take effect in a municipality upon its acceptance.

Added by St.2010, c. 26, eff. May 11, 2010.

§ 3. Procedures for payment of municipal fines; power to revoke or rescind

A municipality that adopts this chapter shall, in the manner provided in this chapter adopt procedures for the payment of the municipal fines provided in this chapter and may revoke or rescind any such acceptance.

Added by St.2010, c. 26, eff. May 11, 2010.

§ 4. Procedures for payment of fines determined by majority vote

The adoption of procedures for the payment of certain municipal fines under this chapter shall be by majority vote of the city council or town meeting

Added by St.2010, c. 26, eff. May 11, 2010.

§ 5. Sidewalk snow and ice removal; penalties for non-compliance; standards for clearance

A municipality shall by ordinances and by-laws provide for the removal of snow and ice from sidewalks within such portions of the municipality as they consider expedient by the owner of land abutting such sidewalks. Such ordinances and by-laws shall determine the time and manner of removal and shall affix penalties, not exceeding $200, for each such violation. Such ordinances and by-laws shall be specific as to the width of the area to be cleared and the standards for clearance.

Added by St.2010, c. 26, eff. May 11, 2010.

§ 6. Municipal hearing officer

A municipality shall appoint a municipal hearing officer. The officer shall hear appeals of violation notices issued within the municipality. The municipal hearing officer may be the same person appointed as a municipal hearing officer pursuant to chapter 148A.

Added by St.2010, c. 26, eff. May 11, 2010.

§ 7. Administrative disposition of noncriminal violations

A municipality may implement a system for the administrative disposition of noncriminal violations pursuant to section 21D of chapter 40.

Added by St.2010, c. 26, eff. May 11, 2010.

§ 8. Violation notices

Every officer and inspector who takes notice of a violation of a rule, regulation, order, ordinance or

by-law regulating the housing, sanitary or snow and ice removal requirement shall provide the offender with a notice forthwith, which shall be in tag form, to appear before the municipal hearing officer or the hearings officer's designee during regular office hours, not later than 21 days after the date of such violation. All tags shall be prepared in triplicate or by the use of an automated ticketing device and shall be pre-numbered.
Added by St.2010, c. 26, eff. May 11, 2010.

§ 9. Affixing of violation tags

The tag shall be affixed securely to the building or, for a building with an onsite professionally-managed property office, delivered to the office during normal business hours and shall contain, but shall not be limited, to: the date, time and place of the violation, the specific violation charged, the name and badge number of the officer or inspector and his division, a schedule of payment for established fines and instructions for return of the tag.
Added by St.2010, c. 26, eff. May 11, 2010.

§ 10. Retention and delivery of violation notice copies

Within 3 business days after completion of each shift, the officer or inspector shall give to his superior those copies of each notice of a violation issued during such shift. The superior shall retain and preserve 1 copy and shall, not later than the beginning of the next business day after receipt of the notice, deliver another copy to the municipal hearing officer before whom the offender has been notified to appear, unless the ticket was produced by an automated ticketing device, in which case no duplicate copies need be retained. The municipal hearing officer shall maintain a docket of all such notices to appear.
Added by St.2010, c. 26, eff. May 11, 2010.

§ 11. Schedule of fines for violations

The municipality shall, by ordinance or by-law, establish a schedule of fines for violations subject to this chapter committed within the municipality; provided, however, that all such fines shall be uniform for the same offense committed in the same zone or district, if any. A fine established under this chapter shall not exceed the maximum allowable amount under the relevant sections of the housing or sanitary code or municipal snow and ice removal requirement, excluding late fees.
Added by St.2010, c. 26, eff. May 11, 2010.

§ 12. Return of notice of violation; payment; request for hearing; additional charges for non-payment

Where a notice of violation is issued for a code violation, the alleged violator, within 21 days, shall return the notice of violation by mail, personally or by an authorized person, to the municipal hearing officer and shall either: (1) pay in full the scheduled fine by check, postal note, money order or other legal tender; or (2) request a hearing before the municipal hearing officer. Each violation issued shall contain a statement explaining the procedure to adjudicate the violation by mail. Any amounts paid shall be payable to the municipality. If a fine remains unpaid for 21 days and no hearing has been requested, a letter shall be sent to the property owner of record's mailing address and, if appropriate to the local individual or property management company responsible for the maintenance of the property, with a processing fee of not more than $10, notifying him that the fine shall be paid within 30 days after receipt of that notice unless within 14 days of receiving that notice the property owner requests a hearing before the municipal hearing officer and swears in writing under the pains and penalties of perjury that the property owner did not receive the notice of violation. If the fine remains unpaid after that 30 day period, additional penalties and interest may be attached. Thereafter, any fine and additional penalties and interest that may be attached and which remain unpaid shall become an additional assessment on the property owner's tax bill. Such amount and cost relative thereto may also be a lien upon such real estate as provided in section 42B of chapter 40. A municipality's determination of whether to place a lien on the property may involve the number of and the dollar amount of the violations on the property. The property owner of record shall be notified by certified mail of the lien on the property. No lien shall be removed without notice from the tax collector that all such matters have been disposed of in accordance with law. Additional charges equal to the amount required to file the lien and the amount required to release the lien shall be assessed against the owner of record for the purpose of ensuring that all costs associated with filing and release are recovered.
Added by St.2010, c. 26, eff. May 11, 2010.

§ 13. Challenge to validity of violation notice

Any person notified to appear before the municipal hearing officer, as provided herein may, with-

out waiving the right to a hearing provided by this chapter and without waiving judicial review as provided in section 14 of chapter 30A, challenge the validity of the violation notice and receive a review and disposition of the violation from the municipal hearing officer by mail. The alleged violator may, upon receipt of the notice to appear, send a signed statement of objections to the violation notice as well as signed statements from witnesses, police officers, government officials and other relevant parties. Photographs, diagrams, maps and other documents may also be sent with the statements. Any statements or materials sent to the municipal hearing officer for review shall have attached the person's name and complete address as well as the ticket number and the date of the violation. The municipal hearing officer shall, within 21 days after receipt of such material, review the material and dismiss or uphold the violation and notify the alleged violator by mail of the disposition of the hearing. If the outcome of the hearing is against the alleged violator, the municipal hearing officer shall explain the reasons for the outcome on the notice. Such review and disposition conducted by mail shall be informal, the rules of evidence shall not apply and the decision of the municipal hearing officer shall be final, subject to any hearing provisions provided by this chapter or to judicial review as provided in said section 14 of said chapter 30A.

Added by St.2010, c. 26, eff. May 11, 2010.

§ 14. Written request for hearing; time and location of hearing

Notwithstanding section 21D of chapter 40, a person who desires to contest a violation of any ordinance or by-law of a municipality alleged in a notice to appear, pursuant to violations issued by a municipality in accordance with said section 21D of said chapter 40, shall request in writing a hearing before a municipal hearing officer. The notice to appear shall be in the format specified in said section 21D of said chapter 40, except that the third copy of the notice shall be submitted to the municipal hearing officer unless the ticket was produced by an automated ticketing device.

If the alleged violator requests a hearing before the municipal hearing officer in a timely manner, the municipal hearing officer shall schedule a hearing not later than 45 days after receiving the hearing request. The municipal hearing officer shall duly notify the alleged violator of the date, time and location of the hearing. Hearings shall be held on at least 2 evenings each month. When a hearing notice is sent, the alleged violator shall be given an opportunity to request a rescheduled hearing date. The municipal hearing officer so designated shall not be an employee or officer of the department associated with the issuance of the notice of violation.

The municipal hearing officer shall receive annual training in the conduct of administrative hearings. The hearing and disposition shall be informal and shall follow the rules set forth in chapter 30A. Rules for judicial proceedings shall not apply. In conducting the hearing, the municipal hearing officer shall determine whether the violation occurred and whether it was committed by the person notified to appear.

Added by St.2010, c. 26, eff. May 11, 2010.

§ 15. Appeal of decision of municipal hearing officer

A person aggrieved by a decision of the municipal hearing officer may appeal to the district court, housing court or other court of competent jurisdiction pursuant to section 21D of chapter 40, on a form provided by the municipality, and shall be entitled to a de novo hearing before a clerk magistrate of the court. The court shall consider such appeals under a civil standard. The aggrieved person shall file the appeal within 10 days after receiving notice of the decision from the municipal hearing officer who conducted the hearing.

Added by St.2010, c. 26, eff. May 11, 2010.

§ 16. Effect of failure to pay, request hearing or appear

Any person who has received a notice of violation issued in accordance with this chapter who, within the prescribed time, fails to pay the same or fails to request a hearing before the municipal hearing officer or who fails to appear at the time and place of the hearing, shall be deemed responsible for the violation as stated in the notice of violation. Such finding of responsibility shall be considered prima facie evidence of the violation in a civil proceeding regarding that violation and shall be admissible as evidence in a subsequent

criminal proceeding. If a person fails to appear at the scheduled hearing without good cause, the appeal shall be dismissed and the violator shall waive any further right of appeal. If the condition which caused the notice of violation to issue continues to exist, the finding of responsibility may also be used by a municipality as prima facie evidence of the existence of a violation in any proceeding to suspend or revoke any license, permit or certificate issued by such municipality relative to that building, structure or premises pending the correction of the condition.

Added by St.2010, c. 26, eff. May 11, 2010.

§ 17. Payments of fines, penalties or assessments to the general fund of municipality

All fines, penalties or assessments in actions under this chapter shall be paid to the general fund of the municipality.

Added by St.2010, c. 26, eff. May 11, 2010.

§ 18. Local ordinances and by-laws superseded

In a municipality that has accepted this chapter, this chapter shall supersede any local ordinances or by-laws to the contrary.

Added by St.2010, c. 26, eff. May 11, 2010.

CHAPTER 40V

HOUSING DEVELOPMENT INCENTIVE PROGRAM

Chapter 40V of the General Laws was added by St.2010, c. 240, § 105.

Section
1. Definitions.
2. Designation of gateway municipality as an HD Zone; contents of application.
3. Approval of application for tax exemption for housing development project under Sec. 59 of chapter 59.
4. Criteria for eligibility to be a certified housing project; approval of certified housing development project designation.
5. Award of tax credits to sponsor of a certified project.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Definitions

[Text of section applicable as provided by 2010, 240, Sec. 199. See 2010, 240, Sec. 195.]

As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

"Certified housing development project", a housing development project that has been approved by the department for participation in the housing development incentive program.

"Department", the department of housing and community development as established by chapter 23B.

"Gateway municipality", gateway municipality as defined in section 3A of chapter 23A.

"Housing development incentive program" or "HDIP", a program designed to promote increased residential growth, expanded diversity of housing supply, neighborhood stabilization, and economic development within housing development zones in gateway municipalities.

"Housing development project", a multi-unit residential rehabilitation project that is located in a gateway municipality and once rehabilitated, shall contain at least 80 per cent market rate units.

"Housing development zone" or "HD zone", a zone designated by a gateway municipality which shall be characterized by a need for multi-unit market rate residential properties.

"Market rate residential unit", a residential unit priced for households above 110 per cent of the area's household median income.

"Qualified substantial rehabilitation expenditure", the cost of substantial rehabilitation meeting the following criteria: (i) an initial certification by the department that the structure meets the definition of certified housing development project; (ii) a second certification by the department, to be issued prior to construction, certifying that if completed as proposed, the rehabilitation work meets the standards required for a certified rehabilitation; and (iii) a final certification by the department, issued when the property is leased or sold by the taxpayer.

"Sponsors", sponsors, as defined in section 25 of chapter 23B.

"Substantial rehabilitation" and "substantially rehabilitated", the needed major redevelopment, repair and renovation of a property, excluding the purchase of the property, as determined by the department of housing and community development.

Added by St.2010, c. 240, § 105, eff. Aug. 5, 2010.

§ 2. Designation of gateway municipality as an HD Zone; contents of application

[Text of section applicable as provided by 2010, 240, Sec. 199. See 2010, 240, Sec. 195.]

The department may from time to time designate 1 or more areas of a gateway municipality as an HD Zone and take any and all actions necessary or appropriate to such a designation, upon receipt of a municipal application requesting such designation and representing in its application that the municipality, based on its own independent investigation, has determined that the area proposed for designation has a need for multi-unit residential properties. The application shall include a plan which shall include a detailed description of the construction, reconstruction, rehabilitation and related activities, public and private, contemplated

for such zone as of the date of the adoption of the zone plan.

Added by St.2010, c. 240, § 105, eff. Aug. 5, 2010.

§ 3. Approval of application for tax exemption for housing development project under Sec. 59 of chapter 59

[Text of section applicable as provided by 2010, 240, Sec. 199. See 2010, 240, Sec. 195.]

Under section 5M of chapter 59, the department may approve a municipality's application for a tax exemption for a housing development project located within an approved housing development zone.

Added by St.2010, c. 240, § 105, eff. Jan. 1, 2011.

§ 4. Criteria for eligibility to be a certified housing project; approval of certified housing development project designation

[Text of section applicable as provided by 2010, 240, Sec. 199. See 2010, 240, Sec. 195.]

(a) A project may be eligible to be a certified housing development project under this chapter; provided, however, that the proposed project:

(i) contains 2 or more residential units; provided, however, the project may be a mixed-use development that includes commercial uses in addition to residential units;

(ii) contains not more than 50 market rate residential units;

(iii) is located in a designated or proposed HD zone;

(iv) contains at least 80 per cent market rate units upon completion of the rehabilitation, to be sold or leased;

(v) has received from the municipality a property tax exemption under section 5M of chapter 59; and

(vi) is a substantial rehabilitation of an existing property.

(b) The department may from time to time approve 1 or more housing development projects, located in HD zones designated as certified projects under section 2 and take any and all actions necessary or appropriate to such a designation, upon compliance with the following:

(i) receipt of a project proposal for such a designation requesting such designation from the municipality, submitted in a timely manner, in such form and with such information as the department prescribes, supported by independently verifiable information and signed under the penalties of perjury by a person authorized to bind the sponsors;

(ii) receipt of an executed agreement by the municipality which contains a tax exemption under section 5M of chapter 59 and this section so long as the municipality has determined and incorporated in a formal written determination, based on the information submitted with the project proposal and such additional investigation as the municipality shall make, that the project as described in the proposal and all documentation submitted with the proposal:

(A) is consistent with and can reasonably be expected to benefit significantly from the gateway municipality's plans relative to the project property tax exemption;

(B) together with all other projects previously certified and located in the same project HDIP zone, shall not overburden the municipality's supporting resources; and

(C) together with the municipal resources committed to the project, shall, if certified, have a reasonable chance of increasing residential growth, diversity of housing supply, supporting economic development and promoting neighborhood stabilization in 1 of the municipality's housing development zones of the municipality as advanced in the proposal; and

(iii) receipt with such written approval by the municipality of a request for a designation of the project as a certified project for a specified number of years, which shall be not less than 5 years and not more than 20 years.

(c) The department shall evaluate and either grant or deny any project proposal not later than 90 days from the date of its receipt of a complete project proposal and failure to do so by the department shall result in approval of such project for a term of 20 years. Approval of a project due to the department's failure to act within 90 days shall not constitute approval by the department of any tax incentives provided under chapter 62 or 63.

(d) The department may impose a fee for the processing of applications for the certification of any project under this section.

(e) The department shall review such certified project at least once every 2 years. A certified project shall retain its certification for the period specified by the department in its certification deci-

sion unless such certification is revoked prior to the expiration of the specified period. The certification of a project may be revoked only by the department and only upon: (i) the petition of the municipality that approved the project proposal, if the petition satisfies the authorization requirements for a municipal application or the petition of the director of the department; and (ii) the independent investigation and determination of the department that representations made by the sponsors in its project proposal are materially at variance with the conduct of the sponsors subsequent to the certification and such variance is found to frustrate the public purposes that such certification was intended to advance. Upon such a revocation, the commonwealth and the municipality, may bring a cause of action against the sponsors for the value of any economic benefit received by the sponsors prior to or subsequent to such revocation.

Under this section, revocation shall take effect on the first day of the tax year in which the department determines that a material variance commenced. The commissioner of revenue may, as of the effective date of the revocation, disallow any credits, exemptions or other tax benefits allowed by the original certification under this section. The commissioner shall issue regulations to recapture the value of any credits, exemptions or other tax benefits allowed by the certification under this section.

Annually, on or before the first Wednesday in December, the department shall file a report detailing its findings of the review of all certified projects that it evaluated in the prior fiscal year to the commissioner of revenue, to the joint committee on revenue and the joint committee on housing and community development.

Added by St.2010, c. 240, § 105, eff. Aug. 5, 2010.

§ 5. Award of tax credits to sponsor of a certified project

[Text of section applicable as provided by 2010, 240, Sec. 199. See 2010, 240, Sec. 195.]

The department may award to a sponsor of a certified project tax credits available under subsection (q) of section 6 of chapter 62 and section 38BB of chapter 63 not to exceed 10 per cent of the cost of qualified substantial rehabilitation expenditures of the market rate units in the project. The amount and duration of the credit awarded shall be based on the following factors:

(i) the need for residential development and diversity of housing supply in the gateway municipality;

(ii) the extent to which the project will encourage residential development, expansion of diversity of housing supply, support neighborhood stabilization, and promote economic development in the zone; and

(iii) the percentage of market rate units contained in the project.

(b) The department may, limit any incentive or credit available to a project under subsection (q) of section 6 of chapter 62 and section 38BB of chapter 63 to a dollar amount or in any other manner deemed appropriate by the department.

Added by St.2010, c. 240, § 105, eff. Jan. 1, 2011.

CHAPTER 41

OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS

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122. Temporary treasurer; appointment; bond.
123. Temporary clerk; appointment; bond.
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124. Fire and water districts; appropriation for cost of water favorability studies.
125. Temporary housing assistance plans.
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127. Eligibility to apply for tenure; offices excepted; restrictions; duration of tenure; removal for cause.
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131. City or town offices; application statement by head of department for tenure of its members; filing; approval procedure; denial, re-application time limit.
132. Tenure limitations.
133. Appointment and reappointment of police officers.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Town officers to be elected; tenure

Every town at its annual meeting shall in every year when the term of office of any incumbent expires, and except when other provision is made by law or by charter, choose by ballot from its registered voters the following town officers for the following terms of office:

A town clerk for the term of one or more years.

A town treasurer for the term of one or more years.

One or more collectors of taxes for the term of one or more years, unless the town votes otherwise or votes to authorize its treasurer to act as collector.

Three or more selectmen for the term of not more than three years, subject to the provisions of section twenty-one.

One or more assessors for the term of not more than three years.

One or more auditors for the term of one or more years, except where such office is abolished as provided in section fifty-five.

One or more highway surveyors for the term of one or more years; or one or more road commissioners for the term of one or more years.

One or more sewer commissioners for the term of one or more years if the town has provided for such officers, unless the town by vote authorizes its road commissioners to act as sewer commissioners.

A tree warden for the term of one or more years, unless the town by vote or by-law provides that he shall be appointed.

One or more constables for a term of one or more years, unless the town by vote provides that they shall be appointed.

Three or more members of the school committee for terms of not more than three years.

Three or more assistant assessors, if the town so votes, for the term of not more than three years.

Three or more members of the board of health for the term of one or more years if the town provides for such board, otherwise the selectmen shall act as a board of health.

All other town officers shall be appointed by the selectmen unless other provision is made by law or by vote of the town.

In any town or district in which the election date of the officers, authorized under this section, is changed, the officers currently serving shall continue to hold their offices until the appointment or election and qualification of their successors.

In any case where three or more members of a board are to be elected for terms of more than one year, as nearly one-third as may be shall be elected annually.

The provisions of this section or any of the following sections of this chapter which authorize or require the fixing of the terms of office of members of any board, commission or body in such a manner that all such terms would not expire at the same time shall not apply with respect to such board, commission or body after the town has voted under section two of chapter fifty-four A to elect the members thereof by the proportional representational method of election. In no case shall the term of any officer exceed five years.

Amended by St.1934, c. 155, § 1; St.1938, c. 341, § 2; St.1939, c. 3; St.1939, c. 129; St.1943, c. 453, § 3; St.1953, c. 267, § 1; St.1955, c. 33; St.1961, c. 354, § 1; St.1967, c. 658, § 2; St.1973, c. 1134; St.1977, c. 690, § 1; St.1978, c. 349, § 4; St.1980, c. 129; St.1984, c. 363, § 5.

Historical and Statutory Notes

St.1785, c. 52, § 1.
St.1785, c. 75, § 2.
St.1826, c. 143, § 5.
R.S.1836, c. 15, § 33; c. 19, § 16; c. 23, § 10.
St.1857, c. 270, §§ 1, 2, 4.
St.1859, c. 264.
G.S.1860, c. 18, § 31; c. 38, §§ 16, 21.
St.1871, c. 158.
St.1874, c. 389.
St.1877, c. 186.
St.1878, c. 255.
St.1879, c. 223, § 4.
P.S.1882, c. 27, § 78; c. 44, §§ 21, 26.
St.1886, c. 150.
St.1886, c. 295, § 1.
St.1888, c. 221, § 1.
St.1893, c. 304, § 1.
St.1893, c. 417, § 266.
St.1894, c. 16.
St.1894, c. 218.
St.1894, c. 473, § 1.
St.1895, c. 374, § 1.
St.1895, c. 506, §§ 2, 3.
St.1896, c. 190, § 1.
St.1896, c. 319.
St.1898, c. 548, §§ 331, 332, 334.
St.1899, c. 330, § 1.
St.1901, c. 482.
R.L.1902, c. 11, §§ 334 to 336, 338.
St.1907, c. 560, §§ 362 to 364, 366, 456.
St.1911, c. 222.
St.1913, c. 835, §§ 400, 403, 405, 503.
St.1918, c. 257, §§ 151, 152.
St.1918, c. 291, § 26.
St.1919, c. 5.
St.1920, c. 2, § 1.
St.1920, c. 591, §§ 33, 35.
St.1923, c. 66.
St.1925, c. 178.
St.1931, c. 394, § 111.

§ 1A. District defined

Except as otherwise expressly provided, the word "district", as used in this chapter, shall mean a fire, water, sewer, water pollution abatement, refuse disposal, light, or improvement district, or any other district, howsoever named, formed for the purpose of carrying out any of the aforementioned functions, whether established under general law or special act.

Added by St.1967, c. 45, § 1. Amended by St.1969, c. 505, § 4.

§ 1B. Appointed town offices and boards; acceptance by voters

Any office or board, except the board of selectmen and the school committee, elected under the provisions of section 1 may become an appointed position or board by a majority vote of the annual or special town meeting and acceptance by the voters of the town at the annual town elections; provided, however, that any vote by a special town meeting taken under the provisions of this section shall take place at least 60 days prior to the acceptance of the voters at the annual town election. Such acceptance by the voters shall be in the form of the following question, to be placed on the official ballot:

Shall the town vote to have its elected (Title of office or board) become an appointed (Title of office or board) of the town? Yes _____ No _____

If a majority of votes cast in answer to said question is in the affirmative, said office or board shall become appointed in accordance with the provisions of this section.

Any incumbent of such office or board serving at the time of acceptance by the voters shall continue to hold said office and to perform the duties thereof until the expiration of the term for which said individual was elected or until said individual otherwise vacates such office; provided, however, that any individual elected to an office or board which becomes an appointed office or board at the same election, under the provisions of this section, shall hold said office and perform the duties thereof until the appointment to said office is otherwise made under the provisions of this section.

Such appointment shall be made by the board of selectmen for a term not to exceed three years, unless such mode of appointment or term is otherwise provided by law.

Added by St.1997, c. 149.

§ 2. Establishment of new board or office; effect; increase or decrease in board membership or number of officers

Where the town elects a new board or officer to perform the duties of an existing board or officer, the office of such existing board or officer shall terminate upon the qualification of the new board or officer. Where official ballots are used, the establishment of a new board or office, or the fixing of the term of office of town officers where such term is optional, or the increase or reduction of the number of members of a board, shall be determined at a meeting held at least sixty days before the annual town election. In towns not using official ballots the matter may be determined by vote at the annual meeting. Such vote shall continue in effect until rescinded. If a town votes to increase the number of members of any board, such increase shall be made by adding one or more to each class, to hold office according to the tenure of the class to which they are severally chosen, as will within three years effect it, and such vote to increase shall remain in force until the increase under it is accomplished. If a town votes to diminish the number of members of any board, such diminution shall be made by choosing annually such number as will within three years effect it, and a vote to diminish shall remain in force until the diminution under it is accomplished. If a town votes to reduce a board of three members to a single officer, such vote shall take effect at the following annual town meeting, and upon election and qualification of such officer the term of said board shall terminate; provided, however, that in towns where official ballots are used, unless the vote thus passed is more than sixty days before the annual town election, it shall not take effect until the next annual town election.

Amended by St.1990, c. 526, § 5; St.1991, c. 234, § 1.

Historical and Statutory Notes

St.1878, c. 255.
P.S.1882, c. 27, §§ 64 to 69, 73.
St.1893, c. 417, §§ 267 to 270.
St.1895, c. 374, § 2.
St.1898, c. 548, §§ 333, 335, 336.
R.L.1902, c. 11, §§ 337, 339, 340.
St.1907, c. 560, §§ 365, 367, 368, 456.
St.1913, c. 835, §§ 404, 406, 407, 503.
St.1920, c. 591, §§ 33, 35.
St.1920, c. 633.

§ 3. City officers; powers and duties

Officers of cities shall have the powers and be subject to the liabilities of the corresponding town officers, if no other provisions are made relative to them.

Amended by St.1978, c. 349, § 5.

Historical and Statutory Notes

R.S.1836, c. 2, § 6, cl. 17.
G.S.1860, c. 19, § 2.
P.S.1882, c. 28, § 2.
St.1882, c. 164.
R.L.1902, c. 26, § 2.
St.1920, c. 633.

§ 4. Penalty for failure to choose selectmen or assessors

A town which does not choose selectmen or assessors shall forfeit such amount, not less than one hundred nor more than five hundred dollars, as the county commissioners of the county where the town is situated may order.

Historical and Statutory Notes

St.1699–1700, c. 26, § 5.
St.1785, c. 50, § 3.
R.S.1836, c. 15, § 35.
G.S.1860, c. 18, § 34.
P.S.1882, c. 27, § 82.
St.1893, c. 423, § 38.
R.L.1902, c. 25, § 96.

§ 4A. Members of town and district boards eligible to hold other offices; salary

Except as otherwise expressly provided, a district board, if authorized by vote of the district at an annual district meeting, or a town board may, if authorized by vote of the town at an annual town meeting, appoint any member thereof to another town or district office or position for the term provided by law, if any, otherwise for a term not exceeding one year. The salary of such appointee shall be fixed by vote of the town or district, notwithstanding the provisions of section one hundred and eight. In this section, the word "town" shall not include city.

Amended by St.1951, c. 6; St.1969, c. 718.

Historical and Statutory Notes

St.1929, c. 36.

§ 5. Voting list; use

The voting list shall be used and the name of every person voting shall be checked thereon, in the election of all town officers whose election is by law required to be by ballot; but in the election of other town officers, the meeting shall determine whether the voting list shall be used.

Amended by St.1934, c. 39, § 4.

Historical and Statutory Notes

St.1874, c. 376, § 23.
P.S.1882, c. 7, § 9.
St.1890, c. 423, § 216.
St.1893, c. 417, § 275.
St.1898, c. 548, § 340.
R.L.1902, c. 11, § 344.
St.1907, c. 560, §§ 372, 456.
St.1913, c. 835, §§ 412, 503.

§ 6. Use of official ballots; towns authorized to provide for

A town may, at a town meeting, vote that official ballots as defined in section one of chapter fifty shall thereafter be used therein; and may, at the annual town meeting or at a meeting held at least thirty days before the annual town meeting, by a two thirds vote rescind such action. In town elections at which official ballots are used, nominations for town officers elected by ballot shall be made, ballots and other apparatus therefor provided, and elections of such officers conducted, in accordance with chapters fifty to fifty-six, inclusive, so far as applicable.

Historical and Statutory Notes

St.1890, c. 386, § 1.
St.1893, c. 87.
St.1893, c. 417, § 293.
St.1898, c. 548, § 360.
R.L.1902, c. 11, § 364.
St.1907, c. 560, §§ 392, 456.
St.1913, c. 835, §§ 432, 503.

§ 7. Use of official ballot; determination of extent

If a town votes that official ballots shall be used for the election of town officers, it shall at the same meeting determine what officers, in addition to those required to be elected by ballot, shall thereafter be chosen by official ballot, and determine the number and terms of office, if not already fixed. No change shall thereafter be made in the officers to be chosen by official ballot, or in the number or terms of office thereof, except at a meeting held at least sixty days before the annual meeting at which such change is to become operative.

Amended by St.1996, c. 454, § 2.

Historical and Statutory Notes

St.1890, c. 386, § 2.
St.1891, c. 10, § 1.
St.1893, c. 417, § 294.
St.1898, c. 548, § 361.
R.L.1902, c. 11, § 365.
St.1907, c. 560, §§ 393, 456.
St.1913, c. 835, §§ 433, 503.

§ 8. Handling of ballots

At any meeting for the choice of town officers in a town not using official ballots, no ballots shall be received by the moderator unless presented for deposit in the ballot box, open and unfolded, by the voter in person, and so that the moderator can know that only one ballot is presented. No moderator or other election officer shall, before the polls

are closed, read, examine, or permit to be read or examined, the names contained upon any ballot.

Historical and Statutory Notes

St.1798, c. 31, § 3.
St.1811, c. 9, § 3.
R.S.1836, c. 4, § 4; c. 15, § 31.
St.1839, c. 42, § 4.
G.S.1860, c. 7, § 12; c. 18, § 30.
P.S.1882, c. 7, § 12; c. 27, § 63.
St.1890, c. 423, §§ 221, 224.
St.1893, c. 417, § 280.
St.1898, c. 548, § 345.
R.L.1902, c. 11, § 349.
St.1907, c. 560, §§ 377, 456.
St.1913, c. 835, §§ 417, 503.

§ 9. Handling of ballots after tabulation; sealing

If the town clerk, selectmen, assessors, treasurer, collector of taxes and school committee are voted for on one ballot, the moderator shall cause all such ballots, when canvassed and counted, and record thereof has been made, publicly to be enclosed in envelopes, which shall be sealed and endorsed, and certified in the manner required by section one hundred and seven of chapter fifty-four.

Historical and Statutory Notes

St.1893, c. 417, § 276.
St.1898, c. 548, § 341.
R.L.1902, c. 11, § 345.
St.1907, c. 560, §§ 373, 456.
St.1913, c. 835, §§ 413, 503.

§ 10. Failure to elect; procedure to fill vacancy; notice

If there is a failure at an election to choose a town officer, except a selectman, or if a person chosen shall not accept such office, or if a vacancy shall occur, the town may at any meeting elect a person to such office.

If, at an election of town officers for which official ballots are used, there is a failure to elect a town officer, he may be elected at an adjourned or succeeding meeting; and ballots shall be prepared and furnished for such meeting, containing the nominations already made and such as may subsequently be made for the office.

The proceedings in such election and the qualifications of a person to be elected or appointed in case of failure to elect, refusal to accept or vacancy shall be the same as in an original election.

If there is a failure to elect or a vacancy occurs in the office of selectman, the remaining selectmen or selectman may call a special election to fill the vacancy and shall call such election upon the request in writing of two hundred registered voters of the town, or twenty per cent of the total number of registered voters of the town, whichever number is the lesser; provided, that such request is filed with them or him not less than one hundred days prior to the date of the next annual election.

If there is a resignation of a town officer creating a vacancy at some later time certain, and such resignation is filed with the town clerk in accordance with the provisions of section one hundred and nine, said town clerk shall certify a vacancy shall occur at the later time certain and the board of selectmen may call a special election as provided in this section; provided, however, that no such election may be held prior to the effective date of the resignation creating such vacancy.

No election shall be held for any office pursuant to this section unless the selectmen file with the town clerk notice of an election for such office not less than fifteen days before the last day to submit nomination papers to the registrars of voters for certification, before the election or any preceding primary, caucus, or preliminary election.

Amended by St.1954, c. 201; St.1985, c. 34; St.1987, c. 112; St.1990, c. 526, § 6; St.1991, c. 278.

Historical and Statutory Notes

St.1785, c. 75, § 4.
R.S.1836, c. 15, § 42.
St.1855, § 8.
G.S.1860, c. 18, § 43.
St.1864, c. 174.
P.S.1882, c. 27, § 93.
St.1890, c. 386, § 15.
St.1891, c. 336, §§ 1, 2.
St.1893, c. 417, §§ 284, 292.
St.1898, c. 548, §§ 351, 359.
R.L.1902, c. 11, §§ 355, 363.
St.1907, c. 560, §§ 383, 391, 456.
St.1913, c. 835, §§ 423, 431, 503.
St.1918, c. 291, § 30.
St.1920, c. 591, § 33.

§ 11. Appointment to fill vacancy in town office

As used in this section, the term "vacancy" includes a failure to elect. If a vacancy occurs in any town office, other than the office of selectman, town clerk, treasurer, collector of taxes or auditor, the selectmen shall in writing appoint a person to fill such vacancy. If there is a vacancy in a board consisting of two or more members, except a board whose members have been elected by proportional representation under chapter fifty-four A, the remaining members shall give written notice thereof, within one month of said vacancy, to the selectmen, who, with the remaining member or mem-

bers of such board, shall, after one week's notice, fill such vacancy by roll call vote. The selectmen shall fill such vacancy if such board fails to give said notice within the time herein specified. A majority of the votes of the officers entitled to vote shall be necessary to such election. The person so appointed or elected shall be a registered voter of the town and shall perform the duties of the office until the next annual meeting or until another is qualified.

Amended by St.1938, c. 341, § 3; St.1969, c. 296; St.1971, c. 151, § 1; St.1974, c. 101; St.1981, c. 386, § 2.

Historical and Statutory Notes

St.1864, c. 174.
P.S.1882, c. 27, § 86.
St.1891, c. 336, § 1.
St.1893, c. 417, § 290.
St.1898, c. 548, § 357.
R.L.1902, c. 11, § 361.
St.1907, c. 560, §§ 389, 456.
St.1913, c. 835, §§ 429, 503.
St.1918, c. 291, § 31.

§ 12. City clerks; tenure

In cities which accepted chapter three hundred and thirty-two of the acts of nineteen hundred and one, the term of office of the city clerk shall be three years from the date of his election or appointment, except that in cities required to elect a city clerk in December his term shall be three years from the beginning of the next municipal year. In either case the clerk shall serve until the qualification of his successor unless sooner removed; and a person appointed to fill a vacancy in the office of city clerk shall hold the office until the end of the unexpired term of his predecessor.

Historical and Statutory Notes

St.1901, c. 332.
R.L.1902, c. 26, § 15.

§ 13. Bond of town clerk

Every town clerk shall, within ten days after his election and thereafter, at intervals of not more than one year, so long as he continues to hold said office, give bond to the town for the faithful performance of his duties, in a form approved by the commissioner of revenue and in such sum, not less than the amount established by said commissioner, as shall be fixed by the selectmen. If he does not give bond as herein required the selectmen may declare the office vacant and fill the vacancy in the manner prescribed in section fourteen.

Amended by St.1936, c. 18; St.1937, c. 143, § 1; St.1962, c. 233, § 1; St.1978, c. 514, § 19.

Historical and Statutory Notes

St.1888, c. 320, §§ 1, 3.
R.L.1902, c. 102, § 134.
St.1910, c. 319.
St.1918, c. 291, §§ 10, 21.
St.1931, c. 94.

§ 13A. Bond of city clerk

Each city clerk, except in Boston, shall, within ten days after his qualification, give bond to his city with a surety company authorized to transact business in the commonwealth as surety, in a form approved by the commissioner of revenue and in such sum, not less than the amount established by said commissioner, as shall be fixed by the mayor and aldermen, conditioned faithfully to account for all fees received by him for licenses and duplicates thereof for which he is required by law to account, and for the payment over in accordance with law of all such fees, less such sums, if any, as he is allowed by law to retain therefrom.

Added by St.1932, c. 289, § 5. Amended by St.1962, c. 233, § 2; St.1978, c. 514, § 20.

§ 13B. Renewal of licenses and permits; delegation of authority

In a city in which the board of aldermen or city council is the licensing authority such board or council may delegate from time to time to the city clerk of such city, subject to such conditions and limitations as it may impose, the powers vested in such board or council to renew licenses or permits authorized to be renewed under the provisions of chapter one hundred and forty, or of any other general or special law.

Added by St.1954, c. 139.

§ 14. Temporary clerk

If the office of city clerk is vacant, or if a city clerk is unable to perform the duties required by chapters fifty to fifty-six, inclusive, the mayor shall appoint a temporary clerk to perform such duties. If at a town meeting the office of town clerk is vacant, or if the town clerk is absent, the meeting shall elect by ballot a temporary clerk. The selectmen, or in their absence three persons chosen at the meeting in such manner as the voters present shall determine, shall receive and count the votes and declare the election of such clerk. If in case of a vacancy other duties than those required of a town clerk at a town meeting are to be performed, or if he is unable to perform such duties, the selectmen may in writing under their hands appoint a clerk for the performance thereof, who

shall be sworn and shall, in the performance of such duties, have the same powers and be subject to the same requirements and penalties as the town clerk, and he shall immediately make a record of his election or appointment. A temporary clerk appointed under this section shall not be required to be a resident nor a registered voter of the city or town.

Amended by St.1996, c. 454, § 3.

Historical and Statutory Notes

St.1829, c. 54.
R.S.1836, c. 15, §§ 49 to 51.
G.S.1860, c. 18, §§ 47, 48.
P.S.1882, c. 27, §§ 97, 98.
St.1890, c. 423, § 164.
St.1893, c. 417, §§ 117, 285.
St.1898, c. 548, §§ 181, 352.
R.L.1902, c. 11, §§ 184, 356.
St.1907, c. 560, §§ 213, 384, 456.
St.1913, c. 835, §§ 239, 424, 503.
St.1918, c. 257, § 155.
St.1919, c. 5.
St.1920, c. 2.
St.1920, c. 591, § 16.
St.1924, c. 109.

§ 15. Town clerks; powers and duties

The town clerk shall record all votes passed at town meetings held during his term of office. He shall administer the oaths of office to all town officers who apply to him to be sworn, and shall make a record thereof and of the oaths of office taken before justices of the peace of which certificates are filed. He shall, immediately after every annual election of town officers, transmit to the state secretary, on blanks to be furnished by him, a complete list of all town officers elected and qualified and shall promptly report to the secretary any changes in such officers. He shall, except in the county of Suffolk, within seven days after the qualification of a constable make return of his name to the clerk of the courts and to the sheriff of the county. He shall make and keep an index of instruments entered with him required by law to be recorded, which shall be divided into five columns, with appropriate headings for recording the date of reception, the names of parties and the book and page on which each instrument is recorded. It shall be open to public inspection.

Historical and Statutory Notes

St.1692–3, c. 28, § 4.
St.1756–7, c. 26, § 3.
St.1785, c. 75, § 23.
R.S.1836, c. 15, §§ 44, 45.
G.S.1860, c. 18, §§ 45, 46.
P.S.1882, c. 27, §§ 95, 96.
St.1885, c. 190.
St.1889, c. 384.
St.1893, c. 423, §§ 2, 3.
R.L.1902, c. 25, §§ 59, 60, 63, 64.

§ 15A. Certification of appropriations

City and town clerks and clerks of districts shall, as soon as an order or vote appropriating money becomes effective, certify, in a city to the treasurer, assessors and auditor or similar officer, and in a town to the assessors and the town accountant, if any, otherwise to the treasurer, and in a district to the assessors and the accounting officer, if any, otherwise to the treasurer, each appropriation in detail, and the provisions made for meeting the same, if specified in the appropriation order or vote.

Amended by St.1949, c. 136; St.1967, c. 45, § 2.

Historical and Statutory Notes

St.1922, c. 86.
St.1923, c. 17.

§ 16. Oaths of town officers; return of certificate

A justice of the peace administering the oath of office to any town officer shall, within seven days thereafter, return to the town clerk a certificate thereof.

Historical and Statutory Notes

St.1756–7, c. 26, § 3.
R.L.1902, c. 25, § 61.

§ 17. Filing of city contracts; penalty for noncompliance

Every officer of a city who makes or executes a contract on behalf of the city shall furnish said contract or a copy thereof to the city clerk and the city auditor within one week after its execution; and the city clerk shall keep such contract or copy on file, open to public inspection during business hours. Such contracts or copies shall be kept in a book by themselves or in several books, arranged according to the subject of the contract, or in other convenient form, and an index to the subject matter of the contracts and to the names of the contractors shall be made semi-annually, and shall also be open to public inspection in some convenient form. All allowances under and additions to such contracts, or copies thereof, shall be filed with the city clerk and the city auditor, together with a sworn statement of the officer making such allowances or additions that the same are correct and in accordance with the contract. A city clerk or other city officer failing to comply with this section shall

be punished by a fine of not less than ten nor more than one hundred dollars.

Amended by St.1954, c. 83.

Historical and Statutory Notes

St.1907, c. 343.
St.1909, c. 201.

§ 18. Assistant city clerk

A city may by ordinance establish the office of assistant city clerk, and prescribe the manner of his appointment and his powers and duties. His certificate or attestation shall have the same effect as that of the city clerk.

Historical and Statutory Notes

St.1869, c. 72.
P.S.1882, c. 28, § 10.
R.L.1902, c. 26, § 16.

§ 18A. Records of city clerk; attestation

The records of the city clerk of a city may be attested by the volume and it shall be deemed to be a sufficient attestation of each and all of the records contained therein when a volume of said records bears the attest with the written signature of the city clerk or of the assistant city clerk duly appointed under the provisions of section eighteen.

Added by St.1948, c. 56.

§ 18B. Facsimile signatures of city clerk or assistant city clerk

A facsimile of the signature of a city clerk or of a duly appointed assistant city clerk, imprinted by either of them upon any original instrument in attestation of the fact that the said instrument has been recorded in the city clerk's office, shall have the same validity as the written signature of either of them.

Added by St.1948, c. 56.

§ 19. Assistant town clerks; powers and duties; compensation

The town clerk may in writing appoint an assistant clerk, who shall be sworn to the faithful performance of his duties; and a record shall be made of the appointment and oath. The assistant town clerk shall, in the absence of the clerk, perform his duties and have the powers and be subject to the requirements and penalties applicable to him, unless a temporary clerk is elected or appointed pursuant to section fourteen. Such duties and powers shall include acting as clerk of the board of registrars of voters, in a town where the town clerk performs this function; provided, that equal representation of the two leading political parties on said board, in accordance with section eighteen of chapter fifty-one, is not affected thereby. In towns having five thousand or more inhabitants an assistant clerk appointed under authority of this section shall not be subject to chapter thirty-one. An assistant clerk appointed under this section shall not be required to be a resident nor a registered voter of the town.

Amended by St.1938, c. 66; St.1945, c. 245; St.1947, c. 391; St.1960, c. 47; St.1971, c. 8; St.1987, c. 58; St.1996, c. 454, § 4; St.2002, c. 157.

Historical and Statutory Notes

St.1829, c. 54, §§ 2, 3.
R.S.1836, c. 15, §§ 50, 51.
G.S.1860, c. 18, § 48.
P.S.1882, c. 27, § 98.
St.1893, c. 60.
St.1893, c. 417, § 285.
St.1893, c. 423, § 4.
St.1895, c. 142.
R.L.1902, c. 25, § 62.
St.1918, c. 291, § 11.
St.1920, c. 633.

§ 19A. Certificate of appointment or election of clerk; filing requirements

Upon the appointment or election of a clerk or an assistant or temporary clerk of a city, town or district, or upon the appointment of a secretary or temporary secretary of a regional school district, the officer making the appointment, otherwise the president of the city council of such city, the chairman of the board of selectmen of such town, the chairman of the prudential committee, if any, otherwise the chairman of the commissioners of such district, or the chairman of the regional district school committee shall execute and file with the state secretary a certificate of such appointment or election, which shall specify the date thereof and the date of the expiration of the term of office, if any, otherwise that the tenure of office is unlimited, and which shall have appended thereto a statement signed by the person appointed or elected that he has entered upon the duties of such office. Upon presentation to the state secretary of a paper attested by any person as the holder of any such office, said secretary shall have authority to certify that such person is the holder thereof and attest to the genuineness of his signature.

Added by St.1933, c. 70, § 1. Amended by St.1964, c. 14; St.1967, c. 45, § 3.

§ 19B. City and town clerks; tenure of office

Every city or town clerk under age seventy duly elected or appointed, except a temporary clerk, who has served therein continuously not less than five years, shall, notwithstanding any contrary provision of general or special laws, hold office during good behavior until he has attained age seventy in any city or town in which this section is accepted as hereinafter provided, but subject, however, to retirement under the provisions of any applicable general or special law relative to retirement systems.

Added by St.1950, c. 388.

§ 19C. Acceptance of Sec. 19B; procedure; petition

In cities, and in any town using official ballots, acceptance of the provisions of section nineteen B shall be by vote in answer to a question placed on the official ballot at a regular city or town election as hereinafter provided; and in towns not using official ballots at town elections, such acceptance shall be by vote at an annual town meeting.

If there is filed with the clerk of a city or town a petition requesting the acceptance of the provisions of section nineteen B containing the signatures of not less than five thousand registered voters or of five per cent of the registered voters of such city or town, whichever is the lesser number, such question shall be submitted for acceptance to the registered voters at the next regular annual or biennial city election or the next annual town election or annual town meeting, as the case may be, which occurs more than sixty days after the filing of such petition.

All such petitions shall bear the endorsement thereon of the names and addresses of three registered voters designated as filing the same. The provisions of law relative to the signing of nomination papers of candidates for elective office and to the identification and certification of names thereon, submission to the registrars therefor and filing objections thereto shall apply, so far as apt, to petitions filed under this section. The registrars of voters shall within five days after such submission ascertain by what number of registered voters such petition has been signed, and shall make and certify a statement of their determination in detail, setting forth such number and whether or not the same has been signed by the number of registered voters herein required, and shall attach such statement to said petition.

If such petition bears the signatures of registered voters in the number herein required, as shown by the statement of the registrars of voters, and has been filed seasonably with the city clerk or with the town clerk of any town using official ballots, and the said clerk finds the same to be in order, he shall cause the following question to be printed on the official ballot to be used for the election of city or town officers, at such regular city or town election, as the case may be:—

"Shall the (city) (town) vote to accept the provisions of section nineteen B of chapter forty-one of the General Laws and thereby provide permanent tenure for (name of incumbent), the present incumbent in the office of (city) (town) clerk?"	YES.	
	NO.	

If a majority of the votes in answer to said question is in the affirmative and the incumbent's term is a continuing one or if the incumbent's term is expiring and he was re-elected, then said section shall thereupon take full effect in said city or town, but not otherwise.

Added by St.1950, c. 388.

§ 19D. Removal or suspension of clerk having permanent tenure

After the acceptance of the provisions of section nineteen B in any city or town, the incumbent city or town clerk shall not be removed from office, lowered in rank, or suspended, except for just cause, and for reasons specifically given him in writing by the city council or board of aldermen or other appointing authority as the case may be, in the case of cities, or by the board of selectmen in the case of towns. Before any action affecting employment is taken, the said clerk shall be given a full hearing before the appropriate board as referred to in the preceding sentence, of which hearing he shall have at least five days' written notice, exclusive of Sundays and holidays, from said appropriate board, and he shall be allowed to answer charges preferred against him either personally or by counsel. He shall be notified in writing within three days after the hearing of the decision of said board, stating fully and specifically the reasons for removal or suspension.

Within thirty days after the date of the decision of said board following a hearing as set forth in the

preceding paragraph, any city or town clerk who was removed, lowered in rank, or suspended, may bring a petition in the district court within the judicial district in which such clerk resides, praying that the action of said board in removing, lowering him in rank, or suspending him, as the case may be, may be reviewed by the court, and, after such notice in writing to the board which has ordered such removal, lowering in rank, or suspension, as the court deems necessary, it shall hear witnesses, review such action and determine whether or not upon all the evidence such action was justified. If the court finds that such action was justified, the action of the said city council, board of aldermen or board of selectmen, as the case may be, shall be affirmed; otherwise, it shall be reversed and the petitioner shall be reinstated in his office without loss of compensation.
Added by St.1950, c. 388.

§ 19E. Procedure for filling vacancy following death or removal of clerk having permanent tenure

In any city or town in which the clerk has been given permanent tenure by the acceptance of the provisions of section nineteen B, such tenure in office shall be effective only during the incumbency of the person who held such office at the time said section was accepted and it shall not extend to his successor in office. Whenever any vacancy shall occur in the office of city or town clerk in any city or town by reason of the death, retirement, resignation, attaining age seventy or removal of an incumbent who had been given such tenure, his successor, in the case of cities, shall be appointed, or elected as provided by the charter of such city or by the applicable provisions of any general or special law in effect at the time such vacancy occurs; and, in the case of towns, his successor shall be elected in accordance with the provisions of section one of chapter forty-one of the General Laws. Whenever such vacancy occurs in the office of clerk in any town, or in any city in which it is provided by law or by its charter that the city clerk shall be elected by popular vote at a regular election, a temporary clerk may be appointed as provided by section fourteen of said chapter forty-one to serve until the qualification of such duly elected city or town clerk as shall be elected at the next regular annual or biennial election at which such officer shall be elected.

Nothing herein contained, however, shall be construed to prohibit any successor in such office of city or town clerk from obtaining tenure after serving continuously not less than five years by the filing of another petition requesting acceptance of section nineteen B and its acceptance by the registered voters as set forth in section nineteen C.
Added by St.1950, c. 388.

§ 19F. Additional compensation for serving as clerk of city council

In any city which accepts this section, the city clerk shall, if in said city, he is required by statute or ordinance to serve as clerk of the city council, and notwithstanding any provision of section thirty-three A of chapter forty-four or any other general or special law to the contrary, be paid for such services, a salary of a minimum amount of one thousand dollars but not more than four thousand dollars, which shall be in addition to any other compensation to which he may be entitled as clerk of such city.
Added by St.1962, c. 386. Amended by St.1979, c. 467; St.1988, c. 93.

§ 19G. Additional compensation for serving as member of registrars of voters

A clerk of a city or town who also serves as a member of its board of registrars of voters shall, in addition to any compensation to which he may be entitled as city or town clerk, receive the sum of fifty dollars, and, if the number of registered voters exceeds one thousand, an additional fifty dollars for each additional thousand of registered voters or major fraction thereof, provided, however, that the total payment for such service as a member of said board shall not exceed fifteen hundred dollars in any year, except as provided in section nineteen H.
Added by St.1967, c. 346. Amended by St.1968, c. 5; St.1971, c. 64, § 1.

§ 19H. Maximum amount of additional compensation for serving as member of registrars of voters

Notwithstanding the limitation contained in section nineteen G, in a city or town which accepts this section the total amount of additional compensation payable to its clerk who also serves as a member of its board of registrars of voters shall not exceed two thousand dollars.
Added by St.1971, c. 64, § 2.

§ 19I. Additional compensation for serving in other city or town positions

Notwithstanding the provisions of chapter two hundred and sixty-eight A, any clerk of a city or

town who also serves in any other position for such city or town may in addition to any compensation to which he may be entitled as such city or town clerk receive such additional compensation for such additional services as the selectmen, town meeting, town counsel or mayor and city council may provide.
Added by St.1984, c. 5.

§ 19J. Additional compensation for serving as member of board of registrars of voters

Notwithstanding the provisions of sections nineteen G and nineteen H, a city or town which accepts this section may compensate a clerk of a city or town who also serves as a member of its board of registrars of voters, in addition to any compensation to which such clerk is entitled as city or town clerk, a sum not less than fifty dollars but not to exceed one hundred dollars, and, if the number of registered voters exceeds one thousand, an additional sum not less than fifty dollars but not to exceed one hundred dollars for each additional thousand of registered voters or major fraction thereof; provided, however, that the total payment for such service as a member of said board shall not exceed four thousand dollars in any year.
Added by St.1990, c. 473, § 1.

§ 19K. Additional compensation for town clerk

In any town, that accepts this section, a town clerk who has completed the necessary courses of study and training, and has been awarded a certificate by the Massachusetts Town Clerks' Association as a certified Massachusetts municipal clerk, shall receive as compensation from such town, in addition to the regular annual compensation paid by such town for services in such office, an amount equal to 10 per cent of such regular annual compensation, but not more than $1,000 per year. In order to qualify for such additional compensation, a town clerk shall submit to the board of selectmen of such town proof of the award of such certificate. The additional compensation provided in this section shall be prorated for any 12 month period in which an eligible person does not hold the office of town clerk for 12 consecutive months. Such additional compensation shall discontinue when certification is discontinued or withdrawn.
Added by St.1999, c. 170, § 1.

§ 20. Selectmen; duties and oaths; penalty

Selectmen shall, upon the receipt and approval of the bond of a collector of taxes or treasurer, give written notice thereof to the assessors. The selectmen shall be assessors of taxes in towns which have not authorized the election of such officers; and before acting as assessors they shall take the oath required of assessors. A person elected a selectman who enters upon the performance of his duties before taking the oath of office shall forfeit not more than one hundred dollars.
Amended by St.1967, c. 658, § 3.

Historical and Statutory Notes

St.1699–1700, c. 26, § 4.
St.1785, c. 50, §§ 1, 2.
St.1785, c. 75, § 2.
R.S.1836, c. 15, §§ 52 to 54.
G.S.1860, c. 18, §§ 49, 50.
St.1879, c. 157, § 1.
P.S.1882, c. 27, §§ 92, 100, 101.
St.1893, c. 423, §§ 6, 8, 9.
R.L.1902, c. 25, §§ 65 to 67.
St.1931, c. 394, § 112.

§ 21. Authorization for selectmen to act as or appoint other town officers

By vote of a town meeting called for the purpose in any town at least sixty days before an annual meeting, or upon request by petition of ten per cent of the qualified voters of any town filed with the selectmen thereof at least sixty days before an annual town meeting, asking that the selectmen act as a water and sewer board, water commissioners, water and municipal light commissioners, municipal light board, sewer commissioners, park commissioners, board of public works, board of health, assessors, or commission of public safety, or perform the duties of such boards or officers or any of them or that cemetery commissioners, assessors, a superintendent of streets, a chief of the police and fire departments or board of health be thereafter appointed by the selectmen, the selectmen of such town shall include in the warrant for such annual meeting for submission to the voters such question or questions in the following form, to be placed on the official ballot in towns using such ballot:—

Shall the town vote to have its selectmen act as _____?	YES.	
	NO.	

Shall the town vote to have its selectmen appoint _____?	YES.	
	NO.	

If a town, in which the selectmen are elected for terms of one year, shall vote in accordance with this section that its selectmen shall act as or perform the duties of any of the aforesaid boards or officers, it shall, at the next annual meeting, elect one selectman for one year, one for two years and one for three years, or, if five are to be elected, one for one year, two for two years and two for three years, and thereafter in either event shall elect them for terms of three years. Upon the election and qualification of the selectmen at such next annual meeting, and upon the appointment and qualification by oath of the officers herein authorized to perform the duties of any existing town board or officer, the term of office of such existing board or officer shall thereupon terminate, and all the duties, powers and obligations of said boards and officers shall be transferred to and imposed upon their successors.

Amended by St.1934, c. 155, § 2; St.1953, c. 101, § 2; St.1967, c. 658, § 4; St.1977, c. 157; St.1977, c. 690, § 2.

Historical and Statutory Notes

St.1920, c. 591, §§ 36, 46, 47.
St.1921, c. 130.
St.1931, c. 394, § 113.

§ 21A. Removal of persons appointed to positions of chief of police or head of municipal police department

In any city or town which accepts the provisions of this section, any person who is appointed to the position of chief of police or head of the municipal police department in a city, town, or district, shall not be removed from such position until a hearing is held by the appointing authority. For the purpose of this section only failure of reappointment shall be deemed to be a removal. The provisions of this section shall apply only to persons appointed to such positions under the provisions of section twenty-one.

Added by St.1985, c. 210.

§ 22. Officers appointed by selectmen; tenure; compensation; vacancies

Officers appointed by authority of a vote under the preceding section shall hold office until removed by the selectmen, and shall receive such salary as the selectmen may determine, subject to the appropriations of the town therefor; and any vacancies existing in any of said offices under the supervision and control of the selectmen shall be filled in the manner of an original appointment.

Historical and Statutory Notes

St.1920, c. 591, § 44.

§ 23. Rescission of vote by selectmen; election of other officers; tenure

A town may, after a vote under section twenty-one has been in effect therein for a period of not less than three years, by a vote at a meeting held at least sixty days before the annual town election, rescind such action in whole or in part and thereupon such town shall, at the next town election, nominate and elect such officers as are necessary to carry out the duties exercised in accordance with section twenty-one by the board of selectmen or officers appointed by them. Such officers, when to be elected for three year terms, if members of a board of three or more, shall be nominated and elected for one, two or three years respectively, and thereafter for the term of three years, and upon their election and qualification shall have all the duties and obligations imposed upon them by law.

Amended by St.1996, c. 454, § 5.

Historical and Statutory Notes

St.1920, c. 591, § 45.

§ 23A. Executive secretary or town administrator; appointment; tenure

A town may by vote or by-law authorize and empower the selectmen to appoint an executive secretary or town administrator who may be appointed by them for a term of one or three years and to remove him at their discretion. An executive secretary or town administrator appointed under the provisions of this section shall be sworn to the faithful performance of his duties. During the time that he holds office he shall hold no elective town office, but he may be appointed by the selectmen or, with their approval, by any other town officer, board, committee or commission, to any other town office or position consistent with his office. He shall receive such aggregate compensation, not exceeding the amount appropriated therefor, as the selectmen may determine. He shall act by and for the selectmen in any matter which they may assign to him relating to the administration of the affairs of the town or of any town office or department under their supervision and control, or, with the approval of the selectmen, may perform such other duties as may be requested of him by any other town officer, board, committee or commission.

Added by St.1956, c. 145. Amended by St.1996, c. 219.

§ 23B. Town departments; investigations and reports

The selectmen of any town may make an investigation into the conduct and operation of any town department. Upon completion of such investigation a report shall be submitted to the town clerk and such report shall be printed in the annual town report.

Added by St.1959, c. 98.

§ 23C. Persons acting on behalf of selectmen; appointment and removal

No person shall be authorized by vote of a town to act on behalf of the board of selectmen unless the vote provides that such person shall be appointed and may be removed by said board.

Added by St.1965, c. 344.

§ 23D. Municipal data processing centers

A city by ordinance and a town by by-law may provide for the establishment of a municipal data processing center for the use of any department, office, board, committee or agency of the city or town, including the school committee and any public authority or special district within the town and for the appointment of a data processing coordinator.

The data processing center shall be under the supervision and control of the coordinator and shall provide programs or systems for the collection, processing, storage and retrieval of information, and the preparation of reports.

Such ordinance or by-law may provide for the establishment and duties of an advisory board to assist the coordinator in planning and scheduling the use of the data processing center.

The coordinator may also serve in any other public office or position in the city or town, notwithstanding any provision of any general or special law to the contrary. The office or position of coordinator shall not be subject to the provisions of chapter thirty-one.

Added by St.1966, c. 551.

§ 24. Assessors; number; method of selection; tenure

There shall be one, three, five, seven or nine assessors in every city and one, three or five assessors in every town. The assessors in every city and town shall be elected or appointed as otherwise provided by law; but as nearly one third of their number as may be shall be elected or appointed annually, each to hold office for three years and thereafter until his successor is duly elected or appointed. As soon as may be after such annual election or appointment, the assessors of every city and town shall organize by choosing one of their number as chairman and another as secretary or clerk of their board. None of the foregoing provisions shall apply to the city of Boston. In no city or town, including Boston, shall an assessor hold the office of collector of taxes or deputy collector of taxes, whether said deputy is appointed under the provisions of section thirty-seven of this chapter or section ninety-two of chapter sixty.

Amended by St.1945, c. 136, § 1; St.1951, c. 364; St.1953, c. 267, § 2; St.1967, c. 123, § 1.

Historical and Statutory Notes

St.1907, c. 579.
St.1913, c. 835, §§ 408, 503.
St.1920, c. 591, § 34.

§ 24A. Repealed, 1937, 129, Sec. 1

§ 25. Appointment by selectmen; tenure of office

In towns which accept this section or have accepted corresponding provisions of earlier laws, the selectmen shall appoint suitable citizens of the town assessors for a term of not more than three years, and may remove them at any time for cause after a hearing. Upon the qualification of persons so appointed the term of existing assessors of such town shall terminate.

Amended by St.1937, c. 129, § 2.

Historical and Statutory Notes

St.1920, c. 591, §§ 31, 32.

§ 25A. Assistant assessors; appointment by assessors; duties; compensation; tenure

The assessors may appoint as assistant assessors such number of suitable citizens as they deem necessary, and may remove them. Such assistant assessors shall perform such duties as the assessors may require for such time as they may determine and shall receive compensation only for duties performed as so required. Every such assistant assessor shall hold office for the period of one year from the date of his appointment, unless sooner removed; provided, that, in the case the assessors fail to appoint a successor to any such assistant assessor during the month preceding the expiration of his term, he shall continue to serve during the

following period of one year, unless sooner removed. This section shall apply in all cities and towns, except Boston, notwithstanding any provision of special law.

Amended by St.1937, c. 129, § 3; St.1950, c. 151; St.1951, c. 77; St.1968, c. 107; St.1969, c. 447.

Historical and Statutory Notes

St.1921, c. 14.

§ 26. Appointment by selectmen where town so votes

If a town votes under section twenty-one to have its selectmen appoint a board of assessors, the selectmen shall thereupon appoint three or five suitable persons as assessors, who shall act as assessors of the town and shall have all necessary powers therefor.

Amended by St.1937, c. 129, § 4.

Historical and Statutory Notes

St.1920, c. 591, § 37.

§ 26A. Employment of counsel in certain proceedings

The assessors, or selectmen acting as assessors, may employ counsel at the expense of the city or town in all proceedings under chapter fifty-eight A; provided, that if such city or town maintains a city solicitor or town counsel the assessors, or selectmen acting as assessors, shall not employ other counsel but shall use such solicitor or counsel therefor, whose expenses incurred shall be paid from his general appropriation. The foregoing restriction on the right of the assessors to employ counsel for such purpose shall not apply in case the town has made an appropriation covering the employment of counsel therefor.

Added by St.1935, c. 149. Amended by St.1951, c. 215, § 2.

§ 27. Appointment upon failure of incumbents to perform duties

If assessors, or selectmen acting as such, shall fail to perform their duties, the commissioner of revenue may appoint three or more persons to be assessors for such town, who shall be sworn, shall hold office until the offices of assessors are filled by the town, and shall receive from the town compensation as assessors.

Amended by St.1936, c. 118, § 1; St.1978, c. 514, § 21.

Historical and Statutory Notes

St.1785, c. 50, § 3.
R.S.1836, c. 15, §§ 36, 37.
G.S.1860, c. 18, § 36.
P.S.1882, c. 27, § 84.
St.1893, c. 417, § 287.
St.1898, c. 548, § 354.
R.L.1902, c. 11, § 358.
St.1907, c. 560, §§ 386, 456.
St.1913, c. 835, §§ 426, 503.

§ 28. Powers and duties of assistant assessors

Assistant assessors shall, in their respective districts, assist the assessors in estimating the value of the real and personal estate in such districts, and in the performance of such other duties as the assessors require.

Amended by St.1939, c. 342, § 2.

Historical and Statutory Notes

St.1809, c. 127.
R.S.1836, c. 15, § 56.
G.S.1860, c. 18, § 52.
P.S.1882, c. 27, § 103.
St.1893, c. 423, § 11.
R.L.1902, c. 25, § 70.

§ 29. Oath of office; penalty for failure to take oath

Any person chosen to assess taxes or to determine or to assist in determining the value of property for the purpose of taxation shall, before entering upon the performance of his duties, take the following oath:

I, having been chosen to assess taxes and estimate the value of property for the purpose of taxation for the town (or city) of for the year (or years) ensuing, do swear that I will truly and impartially, according to my best skill and judgment, assess and apportion all such taxes as I may during that time assess; that I will neither overvalue nor undervalue any property subject to taxation, and that I will faithfully perform all the duties of said office.

If he neglects to take such oath before entering upon the performance of his duties, he shall forfeit not more than fifty dollars.

Historical and Statutory Notes

St.1699–1700, c. 26, §§ 1, 2.
St.1785, c. 50, § 1.
St.1809, c. 127.
R.S.1836, c. 15, §§ 55 to 57.
G.S.1860, c. 18, §§ 51 to 53.
P.S.1882, c. 27, §§ 102 to 104.
St.1885, c. 355, §§ 1, 2.
St.1893, c. 423, § 10.
R.L.1902, c. 25, § 68.

§ 30. Penalty for false valuation

Any person chosen to determine the valuation of property for the purpose of taxation who, in order

that the taxpayers may escape payment of their just proportion of any state or county tax or in order to evade any law limiting municipal indebtedness or the rate of taxation to a percentage of valuation or for any other fraudulent or corrupt purpose, knowingly fixes the valuation of any property at a smaller or greater amount than its full and fair cash value, or who causes an abatement to be made otherwise than is provided by law, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than six months, or both.

Historical and Statutory Notes

St.1885, c. 335, § 3.
R.L.1902, c. 25, § 69.
St.1909, c. 517, § 3.

§ 30A. Vacancies; effect on powers of remaining assessors

A vacancy in the office of assessor shall not divest or suspend the authority and powers of the remaining assessors, notwithstanding any provision of special law making mandatory the filling of vacancies.

Added by St.1946, c. 211.

§ 30B. Agreements for joint and cooperative assessment, classification and valuation of property

(a) Notwithstanding any general or special law or municipal charter, vote, by-law or ordinance, 2 or more cities and towns, by vote of their legislative bodies, may enter into an agreement, for a term not to exceed 25 years, for joint or cooperative assessing, classification and valuation of property.

The agreement shall provide for:

(1) the division, merger or consolidation of administrative functions between or among the parties or the performances thereof by 1 city or town on behalf of all the parties;

(2) the financing of the joint or cooperative undertaking;

(3) the rights and responsibilities of the parties with respect to the direction and supervision of the work to be performed and with respect to the administration of the assessing office, including the receipt and disbursement of funds, the maintenance of accounts and records and the auditing of accounts;

(4) annual reports of the assessor to the constituent parties;

(5) the duration of the agreement and procedures for amendment, withdrawal or termination thereof; and

(6) any other necessary or appropriate matter.

(b) An agreement under this section may also provide for the formation of a single assessing department for the purpose of employing assistant assessors and necessary staff and for performing all administrative functions. An agreement may also vest in 1 person, the board of assessors of 1 of the parties or a regional board of assessors comprised of at least 1 representative from each of the parties and selected in the manner set forth in the agreement all of the powers and duties of the boards of assessors and assessing departments of the parties. In that case, the existing boards of assessors of the other parties, or of all the parties if their assessors' powers and duties are vested in 1 person, shall terminate in accordance with section 2 for the duration of the agreement. Unless the agreement provides for the board of assessors of 1 of the parties to serve as the assessors for all of the parties, or for 1 city or town to act on behalf of all parties, the agreement shall designate an appointing authority representing all of the parties. That appointing authority shall be responsible for the appointment of an assessor, assistant assessors, and other staff, and in the case of withdrawal or termination of the agreement, shall determine the employment of any employee of 1 of the parties that became part of a single assessing department. Subject to the rules and regulations established by the commissioner of revenue pursuant to section 1 of chapter 58, the agreement shall provide for qualifications, terms and conditions of employment for the assessor and employees of the assessor's office. The agreement may provide for inclusion of the assessor and the assessor's employees in insurance, retirement programs and other benefit programs of 1 of the constituent parties, but all parties to the agreement shall be pay a proportionate share of the current and future costs of benefits associated with the appointment or employment of all persons performing services for them during the duration of the agreement. A city or town party to such an agreement shall include employees under the joint assessing agreement in such programs in accordance with the terms of the agreement.

(c) A city or town may become a party to an existing agreement with the approval of the other parties.

(d) No agreement or amendment to an agreement for joint or cooperative assessing made pursuant to this section shall take effect until it has been approved in writing by the commissioner of revenue.

Added by St.1979, c. 797, § 2. Amended by St.1980, c. 261, § 3; St.2010, c. 188, § 26, eff. July 27, 2010.

§§ 31 to 34. Repealed, 1967, 658, Sec. 5

§ 34A. Repealed, 1931, 426, Sec. 156

§ 34B. Identification of husbands and wives in documents and communications

Whenever the assessor, in any communication, document or writing intended for use outside his department, identifies a husband and wife, he shall use the name of both husband and wife and shall not use a legal phrase as a substitute for either name.

Added by St.1989, c. 400, § 3.

§ 35. Bond of treasurer; duties

Every town treasurer shall give bond annually for the faithful performance of his duties in a form approved by the commissioner of revenue and in such sum, not less than the amount established by said commissioner, as shall be fixed by the selectmen or the mayor and aldermen, and if he fails to give such bond within ten days after his election or appointment, or if within ten days after the expiration of said bond or any renewal of said bond he fails to file a renewal thereof, the selectmen or the mayor and aldermen shall declare the office vacant and the vacancy shall be filled in the manner prescribed by section forty or sixty-one A, as the case may be. He shall receive and take charge of all money belonging to the town, and pay over and account for the same according to the order of the town or of its authorized officers. No other person shall pay any bill of any department; provided, however, this provision shall not prohibit the treasurer from paying such bill by the use of bank treasurer's or cashier's check. He shall have the authority given to an auditor by section fifty-one, and shall annually render a true account of all his receipts and disbursements and a report of his official acts. The bond required herein shall cover the duties of the treasurer with respect to trust funds and funds of retirement systems which are in his custody by virtue of his office, and any such funds, for the purposes of said bond, shall be deemed to be public funds.

Amended by St.1937, c. 143, § 2; St.1939, c. 109, § 1; St.1963, c. 66; St.1967, c. 255; St.1972, c. 766, § 3; St.1978, c. 367, § 70; St.1978, c. 514, § 22.

Historical and Statutory Notes

St.1699–1700, c. 12.
R.S.1836, c. 15, §§ 58, 64.
G.S.1860, c. 18, §§ 54, 59.
P.S.1882, c. 27, §§ 105, 110.
St.1893, c. 423, § 13.
St.1899, c. 394, §§ 3, 4.
R.L.1902, c. 25, § 72.
St.1920, c. 591, § 6.
St.1926, c. 65, § 1.

§ 36. Powers of treasurer; prosecution of actions

He may in his own name and official capacity prosecute actions upon bonds, notes or other securities given to him or to his predecessors in office; and unless otherwise provided, he or the chief or superintendent of police or other police officer of the town may prosecute for trespasses committed in or on any public building or enclosure belonging to or within the town. If a public building or enclosure is owned in part by the town and in part by the county, such prosecution may be instituted by the treasurer of either the town or the county.

Historical and Statutory Notes

St.1699–1700, c. 12.
St.1715–16, c. 14, § 2.
St.1785, c. 28, § 4.
St.1797, c. 14.
R.S.1836, c. 14, § 54; c. 15, §§ 59, 62, 63.
St.1854, c. 87.
St.1854, c. 419.
G.S.1860, c. 18, §§ 55, 56; c. 19, § 15.
St.1870, c. 227.
P.S.1882, c. 27, §§ 106, 107; c. 28, § 26.
St.1893, c. 423, §§ 14, 15.
R.L.1902, c. 25, §§ 73, 74; c. 26, § 39.
St.1904, c. 277.

§ 37. Treasurer acting as tax collector; appointment of deputies

A town treasurer, acting as collector of taxes, may, subject to the approval of the commissioner of corporations and taxation, appoint deputies, who shall give bond for the faithful performance of their duties in such sum and in such form, and subject to such conditions, as the said commissioner may prescribe; and such collector and deputies shall have all the powers of collectors of taxes. Such deputies may be removed by said commissioner for cause. A treasurer acting as collector may issue his warrant to the sheriff of the county or his deputy, or to any constable of the town,

directing them to distrain the property or take the body of any person delinquent in the payment of taxes, and may proceed in the same manner as collectors.

Amended by St.1933, c. 82, § 2; St.1934, c. 259, § 2.

Historical and Statutory Notes

St.1815, c. 130, § 1.
St.1817, c. 69.
R.S.1836, c. 15, §§ 60, 61.
G.S.1860, c. 18, §§ 57, 58.
P.S.1882, c. 27, §§ 108, 109.
St.1893, c. 423, § 16.
R.L.1902, c. 25, § 75.

§ 38. Powers of tax collector

A town may authorize its collector of taxes to use all means of collecting taxes which a town treasurer may use when appointed a collector of taxes.

Historical and Statutory Notes

St.1850, c. 57.
G.S.1860, c. 18, § 73.
P.S.1882, c. 27, § 125.
St.1893, c. 423, § 19.
R.L.1902, c. 25, § 78.

§ 38A. Collection of accounts due city or town; powers and duties of tax collector

A city or town may by ordinance, by-law or vote, notwithstanding any other provision of law, general or special, provide that the collector of taxes shall collect, under the title of city or town collector, all accounts due the city or town, and may in like manner define his powers and duties in relation to the collection of such accounts, but no such ordinance, by-law or vote, heretofore or hereafter passed, shall limit such collector in the exercise of the remedies hereinafter conferred. Such a collector shall in the collection of such accounts have all the remedies provided by sections thirty-five, thirty-six and ninety-three of chapter sixty for the collection of taxes on personal estate. This section shall not apply to the collection of interest on investments of sinking or trust funds. All bills for accounts due the city or town shall state that all checks, drafts or money orders shall be made payable to or to the order of the city or town and not to or to the order of any officer, board or commission.

Whenever the collector of taxes, in any communication, document or writing intended for use outside his department, identifies a husband and wife, he shall use the name of both husband and wife and shall not use a legal phrase as a substitute for either name.

Amended by St.1936, c. 201; St.1941, c. 211; St.1948, c. 197; St.1989, c. 400, § 4.

Historical and Statutory Notes

St.1924, c. 16.
St.1926, c. 269, § 3.

§ 39. Collection of taxes by constable

If a person appointed to collect taxes in a town refuses to serve, or if no person is elected or appointed a collector of taxes, the constables of the town shall be the collectors of taxes.

Historical and Statutory Notes

St.1699–1700, c. 26, § 10.
St.1785, c. 70, § 1.
R.S.1836, c. 15, § 78.
G.S.1860, c. 18, § 71.
P.S.1882, c. 27, § 123.
St.1893, c. 423, § 17.
R.L.1902, c. 25, § 76.

§ 39A. Assistant treasurer

The treasurer of a city or town may in writing appoint, with the approval of the mayor or the selectmen thereof, an assistant treasurer who may be an employee in the treasurer's department. The assistant treasurer shall be sworn to the faithful performance of his duties, and a record shall be made of his appointment and oath. The assistant treasurer shall be a citizen of the United States and a resident of the commonwealth, and shall give bond annually for the faithful performance of his duties in a form approved, and in an amount determined, by the commissioner of revenue. Unless a temporary treasurer is appointed in accordance with law, the assistant treasurer may, in the absence of the treasurer, perform his duties and when performing such duties shall have the powers and be subject to the requirements and penalties applicable to him. The person appointed as assistant treasurer may receive a salary from the city or town for service as such.

Added by St.1939, c. 89. Amended by St.1953, c. 55; St.1978, c. 514, § 23.

§ 39B. Removal of treasurers or city or town collectors

If, in the opinion of the commissioner of revenue, hereinafter referred to as the commissioner, the safety of any city, town, district, or regional school district funds or sums due such city, town, district, or regional school district for taxes or otherwise may be jeopardized by the continuation in office of

a treasurer of such city, town, district, or regional school district, or by the continuation in office of a city or town collector, the commissioner may petition the superior court for the removal of such officer. Pending a hearing upon the petition, any justice of such court, if in his judgment the public good so requires, may, after a hearing, summary or otherwise, as he determines, suspend the authority of such officer to act until final action upon the petition is taken. In case of such suspension, the commissioner shall notify the selectmen of such town or the mayor of such city and the officer so suspended shall be deemed to be unable to perform his duties because of disability within the meaning of section forty or section sixty-one A.

The petition of the commissioner may be heard by a justice of the superior court sitting in any county after such notice to the commissioner and to the officer as the court deems necessary. The court shall hear the parties and their witnesses and the decision of the court shall be final and conclusive. Proceedings under this section shall be advanced for speedy hearing, upon the request of either party. If, after hearing, the court shall be of the opinion that the public good so requires, the court shall by decree remove the officer. Otherwise, the court shall dismiss the petition and, if the authority of the officer to act has been suspended, shall restore such authority.

The word "collector" as used in this section shall include a collector of taxes.

Added by St.1943, c. 284. Amended by St.1951, c. 256; St.1963, c. 257; St.1967, c. 45, § 4; St.1978, c. 514, § 24.

§ 39C. Assistant collector

The collector of a city or town may in writing appoint, with approval of the mayor or the selectmen thereof, an assistant collector who may be an employee in said collector's department. The assistant collector shall be sworn to the faithful performance of his duties, and a record shall be made of his appointment and oath. The assistant collector shall be a citizen of the United States and a resident of the commonwealth, and shall give bond annually for the faithful performance of his duties in a form approved, and in an amount determined by the commissioner of revenue. Unless a temporary collector is appointed in accordance with law, the assistant collector may, in the absence of the collector, perform his duties and when performing such duties shall have the powers and be subject to the requirements and penalties applicable to him; provided, however, that the assistant collector shall not be authorized to sign for the collector instruments of taking pursuant to section fifty-four of chapter sixty. The person appointed as assistant collector may receive a salary from the city or town for service as such.

Added by St.1987, c. 378.

§ 40. Temporary town officers

If the office of town treasurer, town collector of taxes, town accountant or auditor in a town having but one is vacant or if any such officer, because of disability or absence, is unable to perform his duties, the selectmen may in writing signed by them or by a majority of them, which shall be filed in the office of the town clerk, appoint a temporary officer to hold such office and exercise the powers and perform the duties thereof until another is duly elected or appointed and has qualified according to law or the officer who was disabled or absent resumes his duties. Any such temporary officer shall be sworn and give bond for the faithful performance of his duties in accordance with the provisions of law applying to the officer whose place he fills, and if he fails so to do within ten days after his appointment the selectmen shall rescind the appointment and appoint another. If a tree warden, highway surveyor, or road commissioner in a town having but one road commissioner, because of disability or absence, is unable to perform his duties, the selectmen may, in like manner, appoint a temporary officer to hold his office, who shall have like powers and duties until such tree warden, highway surveyor or road commissioner resumes his duties or his successor is elected or appointed, as the case may be. This section shall not apply to cities.

Amended by St.1937, c. 143, § 3; St.1951, c. 83; St.1963, c. 105; St.1973, c. 143; St.1990, c. 368.

Historical and Statutory Notes

St.1838, c. 43.
G.S.1860, c. 18, § 42.
St.1865, c. 234.
P.S.1882, c. 27, §§ 90, 91.
St.1893, c. 417, § 288.
St.1898, c. 548, § 355.
R.L.1902, c. 11, § 359.
St.1907, c. 560, §§ 387, 456.
St.1913, c. 835, §§ 427, 503.

§ 41. Payment of compensation; oath

No treasurer or other fiscal officer of any town or city shall pay any salary or compensation to any person in the service or employment of the town or city unless the payroll, bill or account for such

salary or compensation shall be sworn to by the head of the department or the person immediately responsible for the appointment, employment, promotion, or transfer of the persons named therein, or, in the case of the absence or disability of the head of the department or of such person, then by a person designated by the head of the department and approved by the board of selectmen in towns, and by the mayor in cities, or by the city manager in cities operating under a Plan D or Plan E charter. Except as otherwise provided in a collective bargaining agreement, the treasurer or other fiscal officer may pay the payroll to an employee on a biweekly or semimonthly basis. A commission, committee or board of trustees in a city or town, including a city council, board of aldermen or common council in a city, may for purposes of this section designate any one of its members to make oath to a payroll, bill or account for salary or compensation of its members or employees. This provision shall not limit the responsibility of each member of any such body in the event of a noncompliance with this section.

Amended by St.1968, c. 168; St.1974, c. 441, § 3; St.2003, c. 46, § 19, eff. July 31, 2003.

Historical and Statutory Notes

St.1913, c. 520, § 1.
St.1913, c. 825.
St.1918, c. 23.

§ 41A. Delivery of payroll checks to department heads

Notwithstanding the provisions of section thirty-five, the treasurer of a city or town may deliver or cause to be delivered to the head of a municipal department or his designee the payroll checks for the employees of such department, with the approval of the board of selectmen in towns, and of the mayor in cities, or of the city manager in cities operating under a Plan D or Plan E charter.

Added by St.1971, c. 441.

§ 41B. Payment of public employees by direct bank credits

The treasurer of any city, town or district which accepts this section may pay salaries, wages, or other compensation to any person in the service of such city, town or district by means of deposits to a deposit account or accounts of such person in any one or more savings or cooperative banks, trust companies, or credit unions incorporated in or chartered by the commonwealth; in any one or more national banking associations, federal savings or loan associations or federal credit unions located in the commonwealth; in any one or more banking companies or Morris Plan companies subject to chapter one hundred and seventy-two A; or any one or more savings or loan associations under the supervision of the commissioner of banks; provided, that such person has specifically authorized such deposits, and provided further, that if such deposits are made initially to accounts established for such persons in any one such bank, trust company, credit union, or association, the depository shall have agreed with the treasurer on terms satisfactory to the treasurer for the immediate direct transfer of such deposit to any other such bank, trust company, credit union, or association designated by each such person.

Added by St.1975, c. 586, § 1.

§ 41C. Deposits in credit union; pension or retirement allowances

The treasurer of any city or town may deduct from the pension or retirement allowance of a retired employee of that city or town such sum as such retired employee may specify in writing and shall transmit the same to a credit union designated by such retired employee.

Added by St.1977, c. 77, § 2.

§ 42. Contents of pay roll

Every such pay roll, bill or account shall contain the following information: First, full name of each employee; second, title of office or position authorized by the division of personnel administration wherever applicable, otherwise title authorized by appointing authority; third, salary, wages or other compensation; fourth, dates of employment.

Amended by St.1959, c. 299; St.1974, c. 835, § 139.

Historical and Statutory Notes

St.1913, c. 520, § 2.

§ 43. Penalty

Each appointing, employing or other officer, who wilfully refuses or neglects to comply with any provision of the two preceding sections shall be punished by a fine of not less than twenty-five nor more than one hundred dollars.

Historical and Statutory Notes

St.1913, c. 520, § 3.

§ 43A. Defense of actions against treasurers and collectors; indemnification

If it appears to the mayor and city council of a city or the selectmen of a town, upon petition of the collector of taxes or the treasurer, that an action or suit has been brought against him for damages resulting from his acts as collector or as treasurer, as the case may be, wherein an attachment has been made of the goods, estate, effects or credits of such collector or such treasurer, by trustee process or otherwise, or the disposition of his property has been restricted by injunction and that such acts were performed in good faith, without negligence, and in the belief that he was acting in the interest of the city or town, the city solicitor or town council shall be required by said mayor and city council or selectmen to defend the action or suit or, in case of a town having no town counsel, an attorney shall be employed by the selectmen to defend such action or suit, and the mayor or chairman of the board of selectmen, as soon as may be, shall execute a certificate setting forth the findings of the mayor and city council or selectmen upon such petition and shall cause such certificate to be filed in the court in which such action or suit is pending, and, in the case of attachment of real property, shall cause a certified copy of such certificate to be filed in the registry of deeds for the district in which the property is situated, or, in the case of registered land, in the office of the assistant recorder of the land court for said district, and, in the case of attachment of goods, estate, effects or credits by trustee process, shall cause a certified copy of such certificate to be served upon the trustee thereof, and, in the case of attachment of personal property by mesne process, shall cause a certified copy of such certificate to be served upon the officer who made the attachment of said property, and thereupon any such attachment shall be dissolved by operation of law and any such injunction shall be dissolved by order of the court upon motion. Upon presentation to the treasurer of a city or town by an officer qualified to serve civil process of an execution or attested copy of a decree issued or made against the collector or against the treasurer in an action or suit in which an attachment or injunction has been so dissolved, the treasurer, after an appropriation therefor has been voted to be raised by taxation or from available funds, shall pay the amount payable under said execution or decree. If the tax rate for the current year shall have been fixed the city or town by a two thirds vote may incur debt, within the limit of indebtedness prescribed in section ten of chapter forty-four and subject to the pertinent provisions of said chapter, payable within one year, for the purpose of paying the amount of the execution or decree.

Added by St.1939, c. 88. Amended by St.1941, c. 99.

§ 44. Sinking fund commissioners; election; tenure; appointment of secretary and treasurer

A city or town having a sinking fund as provided in section forty-seven of chapter forty-four shall elect each year for terms of three years the number of sinking fund commissioners equal to the number whose term then expires. In towns they shall be elected by ballot at town meeting, and in cities by concurrent vote of both branches of the city council. In case of a vacancy the remaining member or members shall exercise the powers of the board until the vacancy is filled. The city or town treasurer shall not be eligible as a commissioner, and the acceptance by a commissioner of the office of treasurer shall render his former office vacant. The foregoing provisions as to the mode of electing commissioners shall not apply to boards of sinking fund commissioners which were established before the thirteenth day of June in the year eighteen hundred and seventy-five. The commissioners shall choose a treasurer, who may be the city or town treasurer; and if the city or town treasurer is chosen his bond shall apply to and include duties performed as treasurer of the sinking fund. If any other person is chosen treasurer he shall give a bond, with sureties, to the satisfaction of the commissioners, for the proper performance of his official duties. The commissioners may also choose a secretary.

Historical and Statutory Notes

St.1875, c. 209, § 5.
P.S.1882, c. 29, § 10.
R.L.1902, c. 27, § 14.
St.1913, c. 719, § 13.

§ 45. Board of commissioners of trust funds; membership; powers and duties

Any city or town, except Boston, may create a board of commissioners of trust funds, consisting of three persons who shall have the management of all trust funds given or bequeathed for the benefit of the town or the inhabitants thereof, unless the donor in making the gift or bequest shall otherwise provide. In cities the commissioners shall be appointed by the mayor and confirmed by the coun-

cil. In towns they shall be elected in the same manner as other town officers. At the time of creating said board there shall be appointed or elected one member for one year, one member for two years, and one member for three years; and there shall be appointed or elected annually thereafter one member for three years. Vacancies shall be filled by the mayor, with the approval of the council, or by the selectmen.

Historical and Statutory Notes

St.1907, c. 576, § 104.
St.1915, c. 282, §§ 1, 6.

§ 45A. Commissioners in towns under five thousand population

If a town having less than five thousand inhabitants votes to accept this section, the board of selectmen of such town shall thereafter have all the powers and duties of commissioners of trust funds, as provided in sections forty-five and forty-seven, until such time as the number of inhabitants of said town shall exceed five thousand.

Added by St.1952, c. 79.

§ 46. Town treasurer; duties; bond

The town treasurer shall be the custodian of all funds and securities of such trust funds, shall invest and reinvest them and expend therefrom moneys as directed by the commissioners. The treasurer shall furnish a bond satisfactory to them for the faithful performance of his duties.

Amended by St.1957, c. 203.

Historical and Statutory Notes

St.1915, c. 282, § 2.

§ 47. Powers and duties

The said board of commissioners shall, so far as consistent with the terms of the trusts, manage and control the same, and distribute the income in accordance with the terms of the respective trusts. The board shall keep a record of its doings, and at the close of each financial year shall make a report to the town, showing the total amount of the funds, and their investments, receipts and disbursements on account of the same, setting forth in detail the sources of the receipts and the purposes of the expenditures.

Historical and Statutory Notes

St.1915, c. 282, § 3.

§ 48. Tenure of city auditor

In cities which accepted chapter three hundred and seventy-three of the acts of nineteen hundred and five, the auditor shall hold office for three years from the date of his election or appointment and until his successor is qualified, unless sooner removed; provided, however, the appointing authority may, by written contract, appoint an auditor for a term not to exceed five years. A person chosen to fill a vacancy shall hold the office until the end of the unexpired term of his predecessor.

Amended by St.1994, c. 223.

Historical and Statutory Notes

St.1905, c. 373.

§ 49. Vacancy in office of auditor

If the office of an auditor in a town is vacant, the remaining auditors, if any, may perform the duties thereof and may appoint a person to aid them. If there is no remaining auditor, the selectmen shall appoint an auditor to serve until another is qualified.

Historical and Statutory Notes

St.1890, c. 254.
St.1893, c. 417, § 289.
St.1898, c. 548, § 356.
R.L.1902, c. 11, § 360.
St.1907, c. 560, §§ 388, 456.
St.1913, c. 835, §§ 428, 503.

§ 49A. Assistant auditors; powers and duties; compensation

The auditor, accountant, or officer having similar duties, of a city or town, may in writing appoint, with the approval of the mayor or the selectmen thereof, an assistant, who shall be sworn to the faithful performance of his duties, and a record shall be made of his appointment and oath. Unless a temporary officer is appointed in accordance with law, the assistant may, in the absence of the appointing officer, perform his duties and when performing such duties shall have the powers and be subject to the requirements and penalties applicable to him. The person appointed as assistant hereunder may receive a salary from the city or town for services as such.

Added by St.1948, c. 211. Amended by St.1964, c. 70.

§ 50. Powers and duties of auditors

The auditors of a town shall examine the books and accounts of all its officers and committees intrusted with the receipt, custody or expenditure of money, and all original bills and vouchers on

which money has been or may be paid from its treasury. They shall have free access to such books, accounts, bills and vouchers as often as once a month for the purpose of examination, and shall examine the same at least once in each year, and annually report in writing the result of their examinations. They shall, at least once in each year, verify the cash balance of each of such officers and committees by actual count of the cash and by reconciliation of bank balances, and shall insert in their annual report their certificate under oath of the facts so found.

Historical and Statutory Notes

St.1886, c. 295.
St.1888, c. 221.
St.1893, c. 423, § 20.
R.L.1902, c. 25, § 79.
St.1924, c. 33, § 1.

§ 51. Accounts payable; notice to creditors; part payments

An auditor may notify a person to whom money is due from the town that a certain designated amount, which may be either the whole or a part of the money so due, is payable to him upon application to an officer named in the notice, and, unless payment is refused upon such application, no interest shall accrue on said designated amount after the giving of the notice. A part payment authorized by this section shall not affect a right of tender, lien or other provision of law for the recovery of the amount of the debt, or interest or costs thereon, remaining due; but if the part payment is more than the debt as finally determined, the excess, without interest, shall be repaid to the town.

Historical and Statutory Notes

St.1899, c. 394, §§ 3, 4.
R.L.1902, c. 25, § 80.

§ 52. Approval of bills

All accounts rendered to or kept in the departments of any city shall be subject to the inspection of the city auditor or officer having similar duties, and in towns they shall be subject to the inspection of the selectmen. The auditor or officer having similar duties, or the selectmen, may require any person presenting for settlement an account or claim against the city or town to make oath before him or them, in such form as he or they may prescribe, as to the accuracy of such account or claim. The wilful making of a false oath shall be punishable as perjury. The auditor or officer having similar duties in cities, and the selectmen in towns, shall approve the payment of all bills or pay rolls of all departments before they are paid by the treasurer, and may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive; and in that case the auditor or officer having similar duties, or the selectmen, shall file with the city or town treasurer a written statement of the reasons for the refusal; and the treasurer shall not pay any claim or bill so disallowed. This section shall not abridge the powers conferred on town accountants by sections fifty-five to sixty-one, inclusive.

Historical and Statutory Notes

St.1913, c. 669, §§ 1, 2.

§ 53. Auditing of public trusts

Town auditors shall at least once every year, and so much oftener as they deem necessary, audit the accounts of the trustees of any property the principal or income of which, in whole or in part, was bequeathed or given in trust for public uses for the benefit of the town or any part thereof, or for the benefit of the inhabitants of the town or of any part thereof, and examine and estimate the funds, securities and evidences of property held by such trustees. Said trustees shall give said auditors free access to their accounts, funds, securities and evidences of property; and any such trustee refusing to exhibit the same shall be punished by a fine of not less than fifty nor more than two hundred dollars. Town auditors shall include in their annual reports a report of such auditing and investigation; and if they discover any fraud or irregularity they shall immediately report the same to the mayor and city treasurer or to the selectmen and town treasurer. They shall, at least once in each year, verify the cash balance of such trustees by actual count of the cash and by reconciliation of bank balances, and shall insert in their annual report their certificate under oath of the facts so found; provided, however, that they need not so verify the cash balance by actual count of the cash if the trustee is a bank, banking association or trust company.

Amended by St.1948, c. 84.

Historical and Statutory Notes

St.1904, c. 322.
St.1924, c. 33, § 2.

§ 54. Notice to auditor of payment of public funds to treasurer

Whenever any officer of the commonwealth, or of a county, city or town, makes a payment of public money to the treasurer of a city or town in

the commonwealth, he shall furnish at the same time to the auditor of such city or town, or to the town accountant, if there is no auditor, a written statement of the amount of the payment, and the date and purpose thereof.

Historical and Statutory Notes

St.1912, c. 387.

§ 54A. Notification to assessors of receipts

The auditor or similar officer in cities and the town accountant, if any, otherwise the town treasurer in towns, shall notify the assessors, not later than August first in each year, of the total receipts of the preceding fiscal year, except from taxes, loans and trust funds, and shall specify in detail the source of such receipts.

Amended by St.1936, c. 62; St.1969, c. 849, § 40; St.1973, c. 52, § 1; St.1980, c. 313.

Historical and Statutory Notes

St.1922, c. 135.

§ 55. Town accountant; tenure; powers and duties

Any town may authorize the selectmen to appoint a town accountant, who shall perform the duties and possess the powers of town auditors as defined in sections fifty to fifty-three, inclusive. In towns so authorizing the appointment of a town accountant the office of town auditor may, if the town so vote, be abolished. In towns which have accepted chapter thirty-one or corresponding provisions of earlier laws, the appointment of the town accountant shall be subject to the civil service rules. The town accountant shall be sworn to the faithful performance of his duties, shall hold no other town office involving the receipt or disbursement of money, shall hold office for three years and until a successor is qualified; provided, however, that at the discretion of the appointing authority, a person may be appointed to the position of town accountant for a term of not more than five years and until a successor is qualified. The town clerk, if he holds no other office involving the receipt or disbursement of money, may be appointed to the position of town accountant.

Amended by St.1997, c. 228.

Historical and Statutory Notes

St.1910, c. 624, § 1.
St.1916, c. 252.
St.1921, c. 486, § 8.

§ 56. Warrants for payment of bills

The selectmen and all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town accountant as often as once each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. Such approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the town as the case may be; provided, however, that such approval may be given to any bill received from a state agency for the town's share of the costs of a federal urban planning assistance program, established under the provisions of section 701 of Public Law 83–560, as amended, before any goods, materials or services ordered or to be ordered under such a program have been delivered or actually rendered, as the case may be. The town accountant shall examine all such bills, drafts, orders and pay rolls, and, if found correct and approved as herein provided, shall draw a warrant upon the treasury for the payment of the same, and the treasurer shall pay no money from the treasury except upon such warrant approved by the selectmen. If there is a failure to elect or a vacancy occurs in the office of selectman, the remaining selectman or selectmen, together with the town clerk, may approve such warrant. The town accountant may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive, and in such case he shall file with the town treasurer a written statement of the reasons for such refusal. The treasurer shall not pay any claim or bill so disallowed by the town accountant. So far as apt this section shall apply to cities.

Amended by St.1950, c. 55; St.1956, c. 485; St.1967, c. 249; St.1967, c. 890; St.1975, c. 168; St.1977, c. 348, § 1.

Historical and Statutory Notes

St.1910, c. 624, § 2.
St.1922, c. 84.

§ 57. Books of account and financial records

The town accountant shall keep a complete set of books wherein shall be entered the amount of each specific appropriation, the amounts and purposes of expenditures made therefrom, the receipts from each source of income, the amount of each assess-

ment levied, and the abatements made; and he shall keep his accounts, so far as practicable, in conformity with the classifications and forms prescribed by the director of accounts in accordance with section forty-three of chapter forty-four and in conformity with any systems, classifications, forms and designations prescribed pursuant to regulations of the board of education for use by school committees. The town accountant shall have custody of all contracts of the town, shall keep a register of the sureties on all bonds of indemnity given to the town, shall keep a detailed record of the town debt, showing the purpose for which it was incurred, when incurred, when due, the rate of interest and the provisions made for the payment of the debt.

Amended by St.1974, c. 728, § 1.

Historical and Statutory Notes

St.1910, c. 624, § 3.
St.1919, c. 350, §§ 52, 54.

§ 58. Duties; notice of condition of appropriations; record of appropriations

Whenever any appropriation shall have been expended or whenever, in the judgment of the town accountant, it appears that the liabilities incurred against any appropriation may be in excess of the unexpended balance thereof, he shall immediately notify the selectmen and the board, committee, head of department or officer authorized to make expenditures therefrom, and no claim against such appropriation shall be allowed nor any further liability incurred until the town makes provision for its payment. The town accountant shall, at regular intervals and as often at least as once each month, send to the selectmen and to each board, committee, head of department or officer having the disbursement of an appropriation a statement of the amount of orders approved and warrants drawn on behalf of said board, department or officer during the preceding month, and a statement of the balance of such appropriation remaining subject to draft. Each head of a department, board or committee authorized to expend money shall furnish the town accountant, at the close of the financial year, a list of bills remaining unpaid, showing to whom and for what due, and their amounts; and the town accountant shall incorporate the same in his annual report covering the financial transactions of the town, as provided by section sixty-one.

Historical and Statutory Notes

St.1910, c. 624, § 4.

§ 59. Annual estimates; furnishing to town accountant

The selectmen and all boards, committees, heads of departments, or other officers of a town authorized by law to expend money shall furnish to the town accountant, or, if there is no town accountant, to the appropriation, advisory or finance committee, if any, otherwise to the selectmen, not less than ten days before the end of the calendar year, or not less than ninety days prior to the date of the start of the annual town meeting, whichever is later, detailed estimates of the amount necessary for the proper maintenance of the departments under their jurisdiction for the ensuing fiscal year, with explanatory statements as to any changes from the amounts appropriated for the same purposes in the then current fiscal year, and an estimate of amounts necessary for outlays or permanent improvements. They shall also prepare estimates of any income likely to be received by the town during the ensuing fiscal year in connection with the town's business or property intrusted to their care. The selectmen shall include in their estimates the salaries and expenses connected with their own office, and the salaries of all other town officers shall be included in the estimates for the office, department or branch of the public service of which they are in charge. The treasurer shall, in addition to his estimate of the amount required for the maintenance of his own office, prepare a separate statement indicating the amounts required for the payment of interest on the town debt and for the payment of such portions of the town debt as may become due during the ensuing fiscal year.

Amended by St.1936, c. 94; St.1969, c. 849, § 41; St.1973, c. 1099.

Historical and Statutory Notes

St.1910, c. 624, § 5.

§ 60. Table of estimated appropriations

The town accountant shall immediately upon the close of each calendar year compile statements in tabulated form showing the amounts appropriated and the amounts expended from each appropriation during the preceding fiscal year, the amounts appropriated for the current fiscal year and the amounts expended from such appropriations during the first six months of such year and the amounts estimated to be expended from such appropriations during the second six months of such year, and the estimates for the next ensuing fiscal year, and shall forthwith furnish a copy thereof to

the selectmen, or to such committee as the town may appoint to consider and report on proposed appropriations. The selectmen, or said committee when so appointed, shall after due consideration designate the amounts which in their opinion should be appropriated for the ensuing fiscal year, and shall accompany the same with such explanations and suggestions in relation thereto as they may deem desirable for the proper information of the inhabitants. The selectmen or, if such a committee has been appointed, the committee, shall print and distribute this document at or before the annual town meeting, and the town clerk shall transmit a copy thereof and of all town reports to the director of accounts.

Amended by St.1969, c. 849, §§ 42, 43; St.1975, c. 35.

Historical and Statutory Notes

St.1910, c. 624, § 6.
St.1911, c. 207.
St.1919, c. 350, §§ 52, 54.

§ 61. Annual report

The town accountant shall make an annual report, to be published as a town document, giving a statement of all receipts and expenditures of the town for the past financial year, including those of funds managed by trustees or commissioners for the town and showing also the amount of each specific appropriation, the expenditures therefrom, and the purpose for which money has been spent; and said statement shall be arranged in accordance with the classifications prescribed by the director of accounts. Such report shall contain a statement of any change in the amount of the town debt during the year and a list of indebtedness incurred and unpaid at the end of the financial year.

Historical and Statutory Notes

St.1910, c. 624, § 7.
St.1919, c. 350, §§ 52, 54.

§ 61A. Appointment of temporary officers upon vacancy of certain offices; tenure; bond; removal; powers and duties

If the office of city auditor, city treasurer, city collector of taxes or other officer having charge of a city department is vacant, or if any such officer, because of disability or absence, is unable to perform his duties, the mayor, without confirmation by the city council, any provision of a city charter to the contrary notwithstanding, shall appoint a temporary officer to hold such office and exercise the powers and perform the duties thereof until another is duly elected or appointed and has qualified according to law, or the officer who was disabled or incapacitated resumes his duties; but no such temporary officer shall be appointed under this section for a period longer than sixty days. Any such temporary officer shall be sworn and give bond for the faithful performance of his duties in accordance with the provisions of law applying to the officer whose place he fills, and if he fails so to do within ten days after his appointment the mayor shall rescind the appointment and appoint another.

Amended by St.1937, c. 143, § 4; St.1963, c. 68.

Historical and Statutory Notes

St.1928, c. 207.
St.1930, c. 172.

§ 62. Highway surveyor; duties

If a highway surveyor be chosen, he shall have the exclusive control of the ordinary repair of public ways in his town without being subject to the authority of the selectmen. If more than one highway surveyor be chosen, the selectmen shall annually, before May first, assign to each surveyor the limits and divisions of the ways to be kept in repair by him.

Historical and Statutory Notes

St.1786, c. 81, § 2.
St.1796, c. 58, § 4.
R.S.1836, c. 25, § 7.
G.S.1860, c. 44, § 6.
P.S.1882, c. 52, § 4.
St.1895, c. 374, § 1.
R.L.1902, c. 25, § 81; 51, § 4.
St.1917, c. 344, pt. 4, §§ 10, 11; pt. 8, § 1.

§ 63. Road and sewer commissioners

A town may at an annual meeting if official ballots are not used, otherwise at a meeting held at least thirty days before the annual meeting, vote to elect in the following manner three road commissioners or three sewer commissioners, or both.

It shall, at the annual meeting when such vote is passed or at the annual meeting next succeeding the meeting at which the vote was passed, elect one for one year, one for two years and one for three years; and at each annual meeting thereafter it shall elect one for three years. A town which has voted to elect said officers as herein provided may in like manner rescind such action; and thereupon, if at an annual meeting, the offices of road commissioners or sewer commissioners or both shall be abolished. If such vote is taken at a meeting held at least thirty days before the annual meeting, such abolition shall take effect at the next annual meet-

ing. Upon the election of road commissioners as herein provided, the office of highway surveyor shall be abolished.

Historical and Statutory Notes

St.1871, c. 158, § 1.
P.S.1882, c. 27, § 74.
St.1893, c. 417, § 271.
St.1898, c. 548, § 337.
R.L.1902, c. 11, § 341.
St.1907, c. 560, §§ 369, 456.
St.1913, c. 835, §§ 409, 503.
St.1918, c. 257, § 153.
St.1919, c. 5.
St.1920, c. 2, § 1.

§ 64. Road commissioners; powers and duties

If road commissioners be chosen, they shall exclusively have the powers, perform the duties and be subject to the liabilities and penalties of selectmen and surveyors of highways relative to public ways, monuments at the termini and angles thereof, guide posts, sidewalks and shade trees, and, if sewer commissioners be not chosen, relative to sewers and drains.

Historical and Statutory Notes

St.1871, c. 158, § 2.
St.1873, c. 51.
P.S.1882, c. 27, § 75.
St.1893, c. 423, § 23.
R.L.1902, c. 25, § 83.
St.1917, c. 344, pt. 4, § 12; pt. 8, § 1.

§ 65. Sewer commissioners; powers and duties

If sewer commissioners be chosen, they shall, as to sewers and drains, exclusively have the powers, perform the duties and be subject to the liabilities and penalties of selectmen and road commissioners.

Historical and Statutory Notes

St.1893, c. 304, § 2.
St.1893, c. 423, § 24.
R.L.1902, c. 25, § 84.

§ 66. Superintendent of streets; appointment; tenure

In a town which has not authorized the election of a road commissioner or commissioners or a surveyor or surveyors of highways, or which, having a road commissioner or commissioners or a surveyor or surveyors of highways, has voted in accordance with section twenty-one that a superintendent of streets be appointed by the selectmen, the selectmen shall, as soon after the annual town meeting as may be, appoint in writing a superintendent of streets, who shall receive such compensation as the selectmen or the town determine and shall be removable by them when the public interest requires. He shall be sworn to the faithful performance of his duties, and shall hold office until the next annual town meeting or until his successor is qualified. Upon the qualification of a superintendent of streets appointed by the selectmen in accordance with a vote under said section twenty-one, the office or offices of highway surveyor or surveyors or road commissioner or commissioners shall terminate.

Amended by St.1934, c. 155, § 3.

Historical and Statutory Notes

St.1889, c. 98, §§ 1, 4 to 6.
St.1889, c. 178.
St.1893, c. 423, § 25.
St.1894, c. 17.
R.L.1902, c. 25, § 85.
St.1917, c. 344, pt. 4, § 13; pt. 8, § 1.

§ 67. One superintendent of streets for two or more towns

The selectmen of two or more towns may unitedly, subject to the approval of the department of highways, appoint and fix the compensation of a superintendent of streets who shall exercise the same powers and duties and be otherwise subject to the same provisions of law as if appointed in each of such towns. His compensation shall be paid by said towns in such proportions as the selectmen may unitedly determine.

Amended by St.1991, c. 552, § 33.

Historical and Statutory Notes

St.1917, c. 34.
St.1917, c. 344, pt. 4, § 13.
St.1919, c. 350, §§ 111, 113.
St.1931, c. 394, § 6.

§ 68. Superintendent of streets; powers and duties

The superintendent of streets shall, under the direction of the selectmen, have full charge of all repairs and labor upon public ways and sidewalks, and, if no other provision is made, of repairs upon sewers and drains; and in relation to such matters he shall have the powers, perform the duties and be subject to the liabilities and penalties of surveyors of highways and road commissioners.

Historical and Statutory Notes

St.1889, c. 98, §§ 2, 3.
St.1893, c. 423, § 26.
St.1899, c. 330, § 1.
R.L.1902, c. 25, § 86.
St.1917, c. 344, pt. 4, § 14; pt. 8, § 1.

§ 69. Superintendent of water or sewer department

If a town votes under section twenty-one to have its selectmen act as water and sewer boards, water commissioners or sewer commissioners, the selectmen may appoint a suitable person to act as superintendent of the water or sewer department or designate the superintendent of streets so to act if the town has voted to have its selectmen appoint such officer, who, subject to the control of the selectmen, shall have all necessary powers therefor.

Historical and Statutory Notes

St.1920, c. 591, § 40.

§ 69A. Water commissioners; election; tenure; quorum; vacancies

Any town establishing a water supply or water distributing system under authority of section thirty-nine A of chapter forty may establish a board of three water commissioners or authorize its selectmen to act as such. Such commissioners shall, in the first instance, be elected by ballot to hold office, one until the expiration of three years, one until the expiration of two years, and one until the expiration of one year, from the next succeeding annual town meeting; and at the annual town meeting held on the day on which the shortest of such terms expires, and at each annual town meeting thereafter, one such commissioner shall be elected by ballot for the term of three years. A majority of said commissioners shall constitute a quorum for the transaction of business. After the election of a board of water commissioners under authority of this section, any vacancy occurring in said board from any cause may be filled for the remainder of the unexpired term by said town at any legal town meeting called for the purpose. Any such vacancy may be filled temporarily in the manner provided by section eleven, and the person so appointed shall perform the duties of the office until the next annual meeting of said town or until another person is qualified. Nothing herein contained shall prevent action under section twenty-one or sixty-nine.

Added by St.1938, c. 172, § 4.

§ 69B. Water commissioners; powers and duties

The water commissioners, or the selectmen authorized to act as such, in a town establishing a water supply or water distributing system under authority of section thirty-nine A of chapter forty shall have exclusive charge and control of the water department and water system, subject to all lawful by-laws and to such instructions, rules and regulations as the town may from time to time impose by its vote. They may establish fountains and hydrants, may relocate or discontinue the same, may regulate the use of the water and fix and collect just and equitable prices and rates for the use thereof, and shall prescribe the time and manner of payment of such prices and rates. The income of the water works shall be appropriated to defray all operating expenses, interest charges and payments on the principal as they accrue upon any bonds or notes issued for the purpose of a municipal water supply. If in any fiscal year there should be a net surplus remaining after providing for the aforesaid charges for that fiscal year, such surplus, or so much thereof as may be necessary to reimburse the town for moneys theretofore paid on account of its water department, shall be paid into the town treasury. If in any fiscal year there should be a net surplus remaining after providing for the aforesaid charges and for the payment of any such reimbursement in full, such surplus may be appropriated for such new construction, extraordinary maintenance, or repairs, as the water commissioners, or selectmen authorized to act as such, with the approval of the town, may determine upon; and in case a net surplus should remain after payment for such new construction, extraordinary maintenance, or repairs, the water rates shall be reduced proportionately. Said commissioners, or the selectmen authorized to act as such, shall annually, and as often as the town may require, render a report upon the condition of the works under their charge, and an account of their doings, including an account of the receipts and expenditures.

The provisions of this section relative to the powers and duties of the water commissioners, or the selectmen acting as such, shall also apply to the commission, board or person having charge and control of the water department or water system of any city, town, or district established under special law, notwithstanding any contrary provision therein, upon the acceptance of this section by such city, town, or district.

Added by St.1938, c. 172, § 4. Amended by St.1965, c. 99; St.1969, c. 849, § 43A; St.1971, c. 766, § 9; St.1983, c. 583.

§ 69C. Submission of adoption of board of public works to electorate; ballot

By vote of a town meeting called for the purpose in any town at least ninety days before an annual town meeting, or, in the case of a town which voted thereon and the vote was not in the affirmative, upon request by petition of ten per cent of the qualified voters of any town filed with the selectmen at least sixty days before an annual town meeting, the selectmen shall include in the warrant for such annual meeting for submission to the voters the following question, to be placed on the official ballot in towns using such ballots:—"Shall sections sixty-nine C to sixty-nine F, inclusive, of chapter forty-one of the General Laws, providing for the establishment of a board of public works exercising the powers of certain other departments and town officers be accepted?" If a majority of the votes cast in answer to such question is in the affirmative, this section and sections sixty-nine D to sixty-nine F, inclusive, shall become fully effective beginning with, and for the purposes of, the next annual town election.

Added by St.1953, c. 101, § 1.

§ 69D. Board of public works; membership; election; tenure; powers and duties

Any town which has accepted the provisions of sections sixty-nine C to sixty-nine F, inclusive, shall elect in the following manner a board of public works, hereinafter called the board, to consist of three members. The initial members thereof shall be elected, one to serve for one year, one for two years, and one for three years, from the date of the annual meeting at which they are elected, and thereafter when the term of any member expires, his successor shall be elected to serve for three years. In all cases the members shall serve until their successors are elected and qualified. The members of the board shall, after each election, elect one of their members to act as chairman for the ensuing year.

Upon the election and qualification of the members of the board, the board shall have all the powers and duties now or from time to time vested by general law or special act in the following boards, departments and offices, or in boards, departments and offices having corresponding powers and duties in said town, to wit:—road commissioners, surveyors of highways, superintendent of streets, water commissioners, sewer commissioners, municipal light board or commissioners, park commissioners, cemetery commissioners, tree warden, moth superintendent and forestry department, and such boards, departments and offices shall thereupon be abolished. No contracts or liabilities then in force shall be affected by such abolition, but the board of public works shall in all respects be the lawful successor of the boards, departments and offices so abolished.

The board shall have such additional powers with respect to the furnishing of engineering services, the collection and disposal of garbage and refuse, the maintenance and repair of town buildings and property, and the performance of such duties of any other boards, departments and offices of the town as may be reasonably related to the duties and responsibilities of a board of public works, as the town may, from time to time, by by-law provide, any other provisions of law to the contrary notwithstanding.

Added by St.1953, c. 101, § 1.

§ 69E. Superintendent of public works; appointment; powers and duties

The board shall appoint and fix the compensation of a superintendent of public works, who shall exercise and perform, under the supervision and direction of the board, such of the powers, rights and duties transferred to it under section twenty-one or section sixty-nine D as it may from time to time designate. He shall be responsible for the efficient exercise and performance of such powers, rights and duties and shall hold office subject to the will of the board. He shall be specially fitted by education, training and experience to perform the duties of said office, and may or may not be a resident of the town. During his tenure he shall hold no elective or other appointive office, nor shall he be engaged in any other business or occupation. He shall give to the town a bond with a surety company authorized to transact business in the commonwealth as surety, for the faithful performance of his duties, in such sum and upon such conditions as the board may require, and shall, subject to the approval of the board, appoint such assistants, agents and employees as the exercise and performance of his powers, rights and duties may require. He shall keep full and complete records of the doings of his office and render to the board as often as it may require a full report of all operations under his control during the period reported upon; and annually, and from time to time as required by the board, he shall make a synopsis of such reports for publication. He shall

keep the board fully advised as to the needs of the town within the scope of his duties, and shall furnish to the board each year upon its request a carefully prepared and detailed estimate in writing of the appropriations required during the next succeeding fiscal year for the proper exercise and performance of all said powers, rights and duties.
Added by St.1953, c. 101, § 1. Amended by St.1954, c. 45.

§ 69F. Submission to voters of revocation of acceptance; conditions; effect

Any town which has accepted the provisions of sections sixty-nine C to sixty-nine F, inclusive, may, after the expiration of three years from the date of such acceptance, upon petition of ten per cent of the qualified voters of the town filed with the selectmen at least sixty days before an annual town meeting, vote at an annual meeting to revoke such acceptance, and the question of such revocation shall be submitted to the voters in the form of the following question:—"Shall the acceptance by the town of sections sixty-nine C to sixty-nine F, inclusive, of chapter forty-one of the General Laws providing for the establishment of a board of public works exercising the powers of certain other departments and town officers be revoked?" If a majority of the votes cast in answer to said question is in the affirmative, then at the next annual town election held after said vote to revoke, the town shall elect such officers as are necessary to exercise and perform the powers, rights and duties transferred to the board of public works by said sections. Such action shall not affect any contract or liability then created or existing. All general laws respecting town administration and town officers, and any special laws relative to said town, the operation of which has been suspended or superseded by the acceptance of said sections sixty-nine C to sixty-nine F, inclusive, shall then be in full force and effect. Any by-law inconsistent with such special or general laws shall be revoked thereby. Any subsequent vote to revoke the acceptance of said sections shall not be taken more often than once in three years.
Added by St.1953, c. 101, § 1. Amended by St.1965, c. 30.

§ 69G. Office of lands and natural resources; establishment; powers and duties; director and assistants

Every city or town may establish an office of lands and natural resources. Said office shall have charge of such lands as may be committed to its care and may perform such maintenance and improvement work on other municipal lands as may be permitted by the board, department, commission or committee in charge thereof. Said office shall exercise the duties of tree warden and superintendent of insect pest control, and upon the establishment of said office and offices of tree warden and superintendent of insect pest control shall be abolished. Said office shall be under the control of a director qualified by training and experience in the field of arboriculture and licensed by the pesticide board in the department of environmental protection. The city manager or the town manager in a city or town having such manager, the mayor in any other city and the selectmen in any other town shall appoint said director for a term of three years. The commissioner of environmental management shall be notified in writing forthwith by the city or town clerk of said appointment and the name and address of said director. The director may appoint such assistants as appropriations permit. He shall have control of all sums appropriated for and to be expended by the office and may apply for and receive such federal, state and county assistance as may be available. Nothing contained in this section shall be construed to affect the powers and duties of a conservation commission established under section eight C of chapter forty.
Added by St.1970, c. 233. Amended by St.1975, c. 706, §§ 101, 102; St.1990, c. 177, § 124.

§ 70. Planning board; duties

Every city and every town having a population of more than ten thousand at the last preceding national census shall, and towns having a population of less than ten thousand may, create a planning board, which shall make careful studies of the resources, possibilities and needs of the town, particularly with respect to conditions injurious to the public health or otherwise in and about rented dwellings, and make plans for the development of the municipality, with special reference to proper housing of its inhabitants. In cities the said board shall be appointed by the mayor, subject to confirmation by the council, and in towns shall be elected at the annual town meeting or be appointed in such manner as an annual town meeting may determine.

No planning board shall be established under this section after December thirty-first, nineteen hundred and thirty-six, but any such board estab-

lished under this section or corresponding provisions of earlier laws and existing on said date shall continue until its existence is terminated under section eighty-one B.

Amended by St.1936, c. 211, § 1; St.1947, c. 340, § 1; St.1957, c. 273, § 1; St.1992, c. 403, § 7.

Historical and Statutory Notes

St.1913, c. 494, § 1.
St.1914, c. 283, § 1.

§ 71. Annual report

Every planning board shall make a report annually to the city council or to the annual town meeting, giving information regarding the condition of the town and any plans or proposals for its development and estimates of the cost thereof. Every such planning board shall file with the director of housing and community development a copy of each report made by it.

Amended by St.1943, c. 266; St.1953, c. 409, § 6; St.1966, c. 126; St.1975, c. 163, § 15; St.1998, c. 161, § 276.

Historical and Statutory Notes

St.1913, c. 494, § 2.
St.1919, c. 350, § 87.

§ 72. Ordinances and by-laws

Cities and towns may make ordinances and by-laws for carrying out the purposes of section seventy and of sections eighty-one A to eighty-one GG, inclusive, and they may appropriate money therefor. The planning board of a town, established under section seventy or corresponding provisions of earlier laws, may be authorized by vote of the town to act as park commissioners therein, and may be vested with all the powers and duties of park commissioners in towns.

Amended by St.1936, c. 211, § 2; St.1947, c. 340, § 2; St.1953, c. 674, § 1.

Historical and Statutory Notes

St.1913, c. 494, § 4.
St.1915, c. 165.

§ 73. Board of survey; membership; length of existence; suspension of powers and duties

In cities which accept this section by vote of the city council or have accepted corresponding provisions of earlier laws, the mayor, with the approval of the city council, may in January in any year appoint three inhabitants thereof to be a board of survey. Of the members first appointed one shall serve for one year, one for two years, and one for three years from the first day of the following February, and thereafter, in January of each year, one member of said board shall be appointed to serve for three years from the first day of February after his appointment, or until his successor is qualified. If a vacancy occurs a member shall be appointed in the manner provided herein to serve for the remainder of the term. The city engineer shall act as clerk of the board. The compensation of the members of the board shall be fixed by the city council. In towns which accept this section or have accepted corresponding provisions of earlier laws, the selectmen shall constitute a board of survey.

No board of survey shall be established under this section after December thirty-first, nineteen hundred and thirty-six; but any such board established under this section or corresponding provisions of earlier laws or by a special act and existing on said date shall continue until its existence is terminated under section eighty-one B. Every board of survey of a city or town which has not accepted the provisions of sections eighty-one K to eighty-one GG, inclusive, or corresponding provisions of earlier laws, shall transmit to the register of deeds of the county or district in which such city or town is situated and to the recorder of the land court within sixty days after the first day of January, nineteen hundred and fifty-four, a statement that there is in such city or town a board of survey and that the city or town has not in the opinion of said board accepted said sections, including a copy certified by the clerk of such city or town of the vote accepting this section or corresponding provisions of earlier laws, or a reference to any special statute under which such board is established. Unless such statement is so transmitted the powers and duties of such board of survey shall be suspended in and in respect to such city or town, until such statement has been sent to such register of deeds and such register has entered such statement in a book in the same manner as is provided in section eighty-one X in the case of planning boards established under section eighty-one A.

Amended by St.1936, c. 211, § 3; St.1947, c. 340, § 3; St.1953, c. 674, § 8.

Historical and Statutory Notes

St.1907, c. 191, §§ 1, 9.
St.1916, c. 190, §§ 1, 9.

§ 74. Approval of plans filed by citizens

After the establishment of a board of survey no person shall open a private way for public use

without first submitting to said board suitable plans thereof in accordance with such rules and regulations as the board may prescribe. In cities such plans shall be so prepared as to show the profiles of such way and the method of drainage of the adjacent or contiguous territory. Upon the receipt of said plans, with a petition for their approval, the board shall give a public hearing thereon, after giving notice of the same by publication once in each of two successive weeks in a newspaper published in the city or town, the last publication to be at least two days before the hearing; and after the hearing, the board may alter such plans, and may determine where such ways shall be located and the width and grades thereof, and shall indicate any modifications on said plans. The plans as approved or modified by the board shall then be signed by the board, and in cities shall be filed in the office of the city engineer, and in towns in the office of the town clerk; and the officer with whom they are filed shall attest thereon the date of filing; and thereafter no way in the territory to which the plans relate shall be laid out or constructed except in accordance therewith, or with further plans subsequently approved by the board.

Historical and Statutory Notes

St.1907, c. 191, § 2.
St.1916, c. 190, § 2.

§ 75. Preparation of plans by board

The board of survey may, and in cities, upon the vote of the planning board and the city council, shall, from time to time cause plans to be made of such territory or sections of lands in the city or town as the board of survey or the planning board may deem necessary, showing thereon the location of such ways, whether already laid out or not, as, in the opinion of the board, the interest of the public may or will require in such territory, showing clearly the direction, width and grades of each way, and in cities a plan of drainage, and said board may incur such expenses as it may deem necessary therefor, not exceeding the amount appropriated for the purpose. In cities such plans shall be prepared by the city engineer, under the direction of the board. Before causing such plans to be made, the board shall give a public hearing thereon, which shall be advertised in the manner prescribed in the preceding section, and shall, after the making of any such plan, give a hearing thereon, advertised in like manner, and keep the plan open to public inspection for one month after the first advertisement of the hearing. After the hearing, and after any alterations deemed necessary by said board have been made, the same shall be approved, signed, marked, filed and attested as provided in respect to the plans mentioned in the preceding section.

Historical and Statutory Notes

St.1907, c. 191, § 3.
St.1916, c. 190, § 3.

§ 76. Substitution of new plans

The board of survey may from time to time make new plans in place of plans filed in accordance with the two preceding sections, or make changes on plans so filed; provided, that any action involving new plans or changes in plans already duly attested and filed shall be made only after the notice and hearing, and in all other respects in the manner specified in section seventy-four; and the last plan so made, or the plan with the changes last made thereon and duly attested and filed, shall be the plan governing the future development of the territory affected.

Historical and Statutory Notes

St.1916, c. 190, § 4.
St.1922, c. 297.

§ 77. Construction or alteration of public ways; restrictions

The powers of the city council or of the selectmen in regard to highways shall not be abridged by sections seventy-three to eighty-one, inclusive, in any manner, except as provided herein, and the powers conferred by said sections shall be in addition to other powers possessed by cities and towns. No public way shown on any plan filed as aforesaid shall hereafter be laid out, located anew, altered or widened, and no such way, whether already or hereafter laid out, shall be constructed by any public authority except in accordance with the plan duly attested and recorded under said sections. If any person shall open for public travel any private way the location, direction, width, grades and in cities the plan of drainage of which have not previously been approved in writing by the board of survey in the manner provided in said sections, neither the city or town nor other public authority shall place any public sewer, drain, water pipe or light in, or do any public construction work of any kind, or make repairs, on such private way; provided, that this section shall not prevent the laying of a trunk sewer, drain, water or gas main if

required by engineering necessities for the accommodation of other territory.

Historical and Statutory Notes

St.1907, c. 191, § 4.
St.1916, c. 190, § 5.
St.1921, c. 486, § 9.

§ 78. Recordation of plan; necessity of approval by board

No register of deeds shall record any plan showing thereon proposed ways in any town having a board of survey, unless there is endorsed thereon a certificate of said board, or other proper officer by it designated, that all laws applicable to such plan have been complied with. The clerk of each town shall notify the register of deeds of the district where such town is situated of the acceptance by such town of section seventy-three or corresponding provisions of earlier laws, or of any special act establishing a board of survey therein, and also the name of the officer designated by said board to approve plans hereunder.

Historical and Statutory Notes

St.1917, c. 185.

§ 79. Entry upon lands by board of survey for examinations and surveys

Boards of survey, their officers and agents may, so far as they deem it necessary in carrying out sections seventy-three to eighty-one, inclusive, enter upon any lands and there make examinations and surveys, and place and maintain monuments and marks.

Historical and Statutory Notes

St.1907, c. 191, § 7.
St.1916, c. 190, § 7.

§ 80. Establishment and discontinuance of exterior way lines

A town which accepts section seventy-three or has accepted corresponding provisions of earlier laws or has accepted any special act authorizing the creation of a board of survey therein may establish, in the manner provided for the laying out of town ways, the exterior lines of any way, the plan of which is approved under section seventy-four or seventy-five or under such special act; and thereafter no structure shall be erected or maintained between the exterior lines of the way so established, except that buildings or parts of buildings existing at the time of the establishment of said lines may remain and be maintained to such extent and under such conditions as may be prescribed by the board of survey of such town. Lines established under this section may be discontinued in the manner provided for the discontinuance of a highway or a town way. This section shall not apply to cities.

Historical and Statutory Notes

St.1907, c. 191, § 5.
St.1918, c. 135.

§ 81. Damages

Sections seventy-three to seventy-nine, inclusive, shall not authorize the taking of land nor authorize a town to lay out or construct any way which may be indicated on any plan until such way has been laid out as a highway; nor shall said sections render a town liable for damages except such as may be sustained under section seventy-six by reason of the making and filing of any new plan or by reason of changes made in any plan already duly attested and filed, and for such damages as may be sustained by reason of the acts of the board of survey, its officers and agents under section seventy-nine. Any person injured in his property as aforesaid or by the establishment or discontinuance of exterior lines under section eighty may recover the damages so caused under chapter seventy-nine.

Historical and Statutory Notes

St.1907, c. 191, §§ 7, 8.
St.1916, c. 190, § 8.
St.1918, c. 135.

§ 81A. Planning board; establishment; membership; tenure; vacancies

Any city except Boston, and, except as hereinafter provided, any town may at any time establish a planning board hereunder. Every town not having any planning board shall, upon attaining a population of ten thousand, so establish a planning board under this section. A planning board established hereunder shall consist of not less than five nor more than nine members. Such members shall in cities be appointed by the mayor, subject to confirmation by the city council and in towns be elected at the annual town meeting or be appointed in such manner as an annual town meeting may determine; provided, that a town which has a planning board established under section seventy may, at an annual town meeting or at a special town meeting called for the purpose, vote to establish a planning board under this section and may provide that the members of the planning board then in office shall serve as members of the planning board

under this section until the next annual town meeting. When a planning board is first established or when the terms of members of the planning board established under section seventy serving as members of the planning board under this section expire, as the case may be, the members of the planning board under this section shall be elected or appointed for terms of such length and so arranged that the term of at least one member will expire each year, and their successors shall be elected or appointed for terms of three or five years each as determined by the city council in the case of a city and by the town meeting in the case of a town. Any member of a board so established in a city may be removed for cause, after a public hearing, by the mayor, with the approval of the city council. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term, in a city, in the same manner as an original appointment, and, in a town, if the members of the board are appointed, in the same manner as the original appointment. If the members of a planning board are elected, any unexpired term shall be filled by appointment by the board of selectmen and the remainder of the members of the planning board until the next annual election, at which time, such office shall be filled, by election, for the remainder of the unexpired term. All appointments pursuant to this section shall be in the manner provided in section eleven. Such a board shall elect annually a chairman and a clerk from among its own number, and may employ experts and clerical and other assistants. It may appoint a custodian of its plan and records, who may be the city engineer or town clerk. No member of a planning board shall represent before such board any party of interest in any matter pending before it.

Towns of less than ten thousand inhabitants, having no planning board established under this section may, by vote of the town meeting, authorize the board of selectmen to act as a planning board under this section until such a board is established; provided, that any such town, upon attaining a population of ten thousand, shall establish a planning board hereunder.

Added by St.1947, c. 340, § 4. Amended by St.1957, c. 273, § 2; St.1959, c. 143; St.1961, c. 276, § 2; St.1975, c. 565, § 1; St.1981, c. 386, § 3; St.1984, c. 57.

§ 81B. Planning board; powers and duties

In any city or town in which a planning board is established under section eighty-one A, if any of the powers and duties of planning boards or boards of survey are being exercised and performed by a planning board established under section seventy or corresponding provisions of earlier laws, or by a board of survey established under section seventy-three or corresponding provisions of earlier laws or by a special act, or by the board of selectmen acting as a planning board, or by any other board, all such powers and duties shall cease to exist, when the members of the planning board established in such city or town under section eighty-one A take office; and thereupon the planning board established therein under section eighty-one A shall have and exercise all the powers and duties heretofore conferred and imposed by general law upon planning boards and boards of survey in cities and towns, as the case may be, and all the powers and duties of any such board theretofore conferred and imposed by special law upon any board of the city or town, with respect to any matters pending before any of said boards at the time of the establishment of the planning board in such city or town under section eighty-one A, as well as the powers imposed by this section and sections eighty-one C to eighty-one GG, inclusive. The officer or person having custody of the records or plans, or both, of the former board shall turn them over to the officer or person entitled to custody of the records and plans of the planning board established under section eighty-one A.

Planning boards established under section eighty-one A, their officers and agents, may, so far as they deem it necessary in carrying out sections eighty-one A to eighty-one J, inclusive, enter upon any lands and there make examinations and surveys, and place and maintain monuments and marks; but any person injured in his property by such entry or other acts without his consent may recover the damages so caused under chapter seventy-nine. The superior court for the county in which the land affected by any of the provisions of sections eighty-one A to eighty-one J, inclusive, lies, sitting in equity and the land court, shall have jurisdiction on petition of a planning board established under section eighty-one A, to enforce any of the provisions of said sections, and any ordinances or by-laws made thereunder, and may restrain by injunction violations thereof.

Added by St.1947, c. 340, § 4. Amended by St.1953, c. 674, § 2; St.2002, c. 393, § 3.

§ 81C. Studies and reports of board; acting as park commissioners

The planning board established under section eighty-one A shall from time to time make careful

studies and when necessary prepare plans of the resources, possibilities and needs of the city or town, and, upon the completion of any such study, shall submit to the city council or selectmen a report thereon, with its recommendations. A copy of each completed study shall be furnished to the department of housing and community development. Said planning board shall report annually to the city council or to the annual town meeting, giving information regarding the condition of the city or town and any plans or proposals for its development and estimates of the cost thereof, and shall at the same time furnish a copy of its report to the department of housing and community development. The planning board of a town established under section eighty-one A may be authorized by vote of a town meeting to act as park commissioners therein, and may be vested with all the powers and duties of park commissioners in towns.

Added by St.1947, c. 340, § 4. Amended by St.1953, c. 409, § 7; St.1967, c. 83, § 2; St.1973, c. 795, § 1; St.1998, c. 161, § 277.

§ 81D. Master plan; economic development supplement

A planning board established in any city or town under section eighty-one A shall make a master plan of such city or town or such part or parts thereof as said board may deem advisable and from time to time may extend or perfect such plan.

Such plan shall be a statement, through text, maps, illustrations or other forms of communication, that is designed to provide a basis for decision making regarding the long-term physical development of the municipality. The comprehensive plan shall be internally consistent in its policies, forecasts and standards, and shall include the following elements:

(1) Goals and policies statement which identifies the goals and policies of the municipality for its future growth and development. Each community shall conduct an interactive public process, to determine community values, goals and to identify patterns of development that will be consistent with these goals.

(2) Land use plan element which identifies present land use and designates the proposed distribution, location and inter-relationship of public and private land uses. This element shall relate the proposed standards of population density and building intensity to the capacity of land available or planned facilities and services. A land use plan map illustrating the land use policies of the municipality shall be included.

(3) Housing element which identifies and analyzes existing and forecasted housing needs and objectives including programs for the preservation, improvement and development of housing. This element shall identify policies and strategies to provide a balance of local housing opportunities for all citizens.

(4) Economic development element which identifies policies and strategies for the expansion or stabilization of the local economic base and the promotion of employment opportunities.

(5) Natural and cultural resources element which provides an inventory of the significant natural, cultural and historic resource areas of the municipality, and policies and strategies for the protection and management of such areas.

(6) Open space and recreation element which provides an inventory of recreational and resources and open space areas of the municipality, and policies and strategies for the management and protection of such resources and areas.

(7) Services and facilities element which identifies and analyzes existing and forecasted needs for facilities and services used by the public.

(8) Circulation element which provides an inventory of existing and proposed circulation and transportation systems.

(9) Implementation program element which defines and schedules the specific municipal actions necessary to achieve the objectives of each element of the master or study plan. Scheduled expansion or replacement of public facilities or circulation system components and the anticipated costs and revenues associated with accomplishment of such activities shall be detailed in this element. This element shall specify the process by which the municipality's regulatory structures shall be amended so as to be consistent with the master plan.

Such plan shall be made, and may be added to or changed from time to time, by a majority vote of such planning board and shall be public record. The planning board shall, upon completion of any plan or report, or any change or amendment to a plan or report produced under this section, furnish a copy of such plan or report or amendment thereto, to the department of housing and community development.

A city or town which has an established master or study plan under section eighty-one A and applies for a state grant from the commonwealth shall prepare and keep on file within such city or town an economic development supplement; provided, however, that such city or town shall not be required to prepare such supplement if such city or town has a supplement on file. Such supplement shall be at least one page in length and shall contain the goals of the city or town with respect to industrial or commercial development, affordable housing, and preservation of parks and open space.
Added by St.1947, c. 340, § 4. Amended by St.1954, c. 643, § 1; St.1973, c. 795, § 2; St.1990, c. 78; St.1990, c. 372; St.1998, c. 161, § 278.

§ 81E. Official map; purpose; recordation

Each city or town having a planning board established under section eighty-one A may, by action of its city council or town meeting adopt an official map, prepared under the direction of such planning board and showing the public ways and parks therein as theretofore laid out and established by law and the private ways then existing and used in common by more than two owners. Such official map is hereby declared to be established to conserve and promote the public health, safety and general welfare. Upon the adoption of such a map, and upon any change therein or addition thereto made as hereinafter provided, the city or town clerk shall forthwith file with the appropriate registry of deeds a certificate of such action and a copy of such map as adopted or as changed or added to. A copy of such official map or any change thereto, shall be furnished to the department of housing and community development. After a plan bearing an endorsement of approval or accompanied by a certificate as provided in the subdivision control law has been recorded, the ways shown on said plan shall be and become a part of the official map. No public water supply or sewer or other municipal utility or improvement shall be constructed in any public or private way in any city or town having an official map elsewhere than in a subdivision approved under the subdivision control law, unless such way has been placed on or made part of such map.

No permit for the erection of any building elsewhere than in a subdivision approved under the subdivision control law in any city or town having an official map shall be issued unless a way giving access to the lot upon which such proposed building is to stand has been placed on or made a part of such map; provided, that an applicant for a building permit which has been denied under this section shall have the same remedy as a person whose application for a building permit has been denied under section eighty-one Y of this chapter.

If such law is not in effect in any city or town adopting an official map, such city or town shall forthwith provide a board of appeals in the manner set forth in section eighty-one Z, which shall have jurisdiction over appeals under this section in the same manner as provided in sections eighty-one Y to eighty-one AA.
Added by St.1947, c. 340, § 4. Amended by St.1953, c. 674, § 3; St.1973, c. 795, § 3; St.1998, c. 161, § 279.

§ 81F. Alteration of official map; damages for injuries

A city or town so adopting an official map, by action of its city council or town meeting, may whenever and as often as it may deem it for the public interest, change or add to such map so as to place thereon lines and notations showing existing or proposed locations, not theretofore mapped, of new or widened public ways and new or enlarged parks, and proposed discontinuances in whole or in part of existing or mapped public ways and parks. No such change or addition shall become effective until after a public hearing in relation thereto before the city council or a committee thereof or before the selectmen, at which parties in interest shall have an opportunity to be heard. At least ten days' notice of such a public hearing shall be given by advertisement in an official publication of, or in a newspaper of general circulation in, the city or town and by mailing a copy of such advertisement to all owners of property abutting on such proposed improvement or discontinuance, as appearing upon the most recent tax list. Any way, which is not a public way, appearing on an official map of a city or town may be modified or removed therefrom by the planning board acting in accordance with the procedure set forth in section eighty-one W, so far as apt, provided that there is no objection at a public hearing by any person in interest. No such change or addition which has not been previously recommended by the planning board established under section eighty-one A shall be adopted until after a report thereon by said board, and no variance from a plan prepared or approved by said planning board shall be made except by a two thirds vote of all the members of a city council, or by a two thirds vote of a town meeting; provided, that the last mentioned require-

ment shall be deemed to be waived in case the matter has been referred to said board for a report and it has failed to report within thirty days thereafter. Any person injured in his property by a change in the official map under this section may recover the damages so caused under chapter seventy-nine.

Added by St.1947, c. 340, § 4. Amended by St.1953, c. 674, § 4; St.1957, c. 235.

§ 81G. Applicability of municipal planning laws to municipal powers over public ways and parks

Sections eighty-one A to eighty-one J, inclusive, shall not abridge the powers of the city council or the selectmen or any other municipal officer in regard to public ways or parks in any manner except as provided therein, nor shall they authorize the taking of land or the laying out or construction of any way or park shown on a map or plan, or the alteration, relocation or discontinuance thereof, except in accordance with the laws governing the same; provided, that, after a city or town has adopted an official map under section eighty-one E, no public way shall be laid out, altered, relocated or discontinued if such laying out, alteration, relocation or discontinuance is not in accordance with such official map as it then appears, unless the proposed laying out, alteration, relocation or discontinuance has been referred to the planning board established under section eighty-one A, and such board has reported thereon, or has allowed forty-five days to elapse after such reference, without submitting its report. After a city or town has adopted an official map under section eighty-one E, no person shall open a way for public use, except as provided in the subdivision control law, unless the location of such way is in accordance with such official map as it then appears, or has been approved by the planning board under the provisions of this section, and in either case, the grading, surfacing and drainage of such way has been approved by such board. Nothing in said sections shall render a city or town liable for damages, except such as may be sustained by entry upon land and other acts under section eighty-one B, by reason of changes in an official map under section eighty-one F, or by reason of the establishment of exterior lines under section eighty-one J.

Added by St.1947, c. 340, § 4. Amended by St.1953, c. 674, § 5.

§ 81H. Part of official map; laying out, altering or relocating public ways

Upon final action by the proper authorities in laying out, altering or relocating a public way, or in discontinuing the whole or any part thereof, or in establishing or enlarging a public park, or closing thereof in whole or in part, the lines and notations showing such improvement, discontinuance or closing, as so established or effected, shall, without further action by the city council or the town meeting, be made a part of the official map, if any, of the city or town in which such public way or park is located.

Added by St.1947, c. 340, § 4.

§ 81I. Duties of municipalities having no official map in respect to construction of ways; reference to planning board

In a city or town having a planning board established under section eighty-one A but which has not adopted an official map no public way shall be laid out, altered, relocated or discontinued, unless the proposed laying out, alteration, relocation or discontinuance has been referred to the planning board of such city or town and such board has reported thereon, or has allowed forty-five days to elapse after such reference without submitting its report. Any city or town having a planning board established under section eighty-one A may, by ordinance, by-law or vote, provide for the reference of any other matter or class of matters to the planning board before final action thereon, with or without provision that final action shall not be taken until the planning board has submitted its report or has had a reasonable fixed time to submit such report. Such planning board shall have full power to make such investigations, maps and reports, and recommendations in connection therewith, relating to any of the subjects referred to it under this section, as it deems desirable.

Added by St.1947, c. 340, § 4.

§ 81J. Establishment and discontinuance of exterior lines of ways in municipalities with planning boards; damages for injuries

A city or town which has a planning board under section eighty-one A may establish, in the manner provided for the laying out of city or town ways, the exterior lines of any way, the location of which has been approved under section eighty-one G or the subdivision control law; and thereafter no

structure shall be erected or maintained between the exterior lines so established, except that buildings or parts of buildings existing at the time of the establishment of said lines may remain and be maintained to such extent and under such conditions as may be prescribed by such planning board. Lines established under this section may be discontinued in the manner provided for the discontinuance of a highway or a city or town way. Lines so established shall be placed on the official map, if any, of the city or town, without further action by the city council or town meeting, and shall be removed therefrom if discontinued. Any person injured in his property by the establishment of exterior lines under this section may recover damages so caused under chapter seventy-nine.

Added by St.1947, c. 340, § 4. Amended by St.1953, c. 674, § 6; St.1956, c. 279.

§ 81K. Designation of subdivision control law

Sections eighty-one K to eighty-one GG, inclusive, shall be designated and may be known as "the subdivision control law". This designation shall, when apt, include corresponding provisions of earlier laws.

Added by St.1953, c. 674, § 7.

§ 81L. Definitions

In construing the subdivision control law, the following words shall have the following meaning, unless a contrary intention clearly appears:—

"Applicant" shall include an owner or his agent or representative, or his assigns.

"Certified by [or endorsed by] a planning board", as applied to a plan or other instrument required or authorized by the subdivision control law to be recorded, shall mean, bearing a certification or endorsement signed by a majority of the members of a planning board, or by its chairman or clerk or any other person authorized by it to certify or endorse its approval or other action and named in a written statement to the register of deeds and recorder of the land court, signed by a majority of the board.

"Drainage", shall mean the control of surface water within the tract of land to be subdivided.

"Lot" shall mean an area of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings.

"Municipal service" shall mean public utilities furnished by the city or town in which a subdivision is located, such as water, sewerage, gas and electricity.

"Planning board" shall mean a planning board established under section eighty-one A, or a board of selectmen acting as a planning board under said section, or a board of survey in a city or town which has accepted the provisions of the subdivision control law as provided in section eighty-one N or corresponding provisions of earlier laws, or has been established by special law with powers of subdivision control.

"Preliminary plan" shall mean a plan of a proposed subdivision or resubdivision of land drawn on tracing paper, or a print thereof, showing (a) the subdivision name, boundaries, north point, date, scale, legend and title "Preliminary Plan"; (b) the names of the record owner and the applicant and the name of the designer, engineer or surveyor; (c) the names of all abutters, as determined from the most recent local tax list; (d) the existing and proposed lines of streets, ways, easements and any public areas within the subdivision in a general manner; (e) the proposed system of drainage, including adjacent existing natural waterways, in a general manner; (f) the approximate boundary lines of proposed lots, with approximate areas and dimensions; (g) the names, approximate location and widths of adjacent streets; (h) and the topography of the land in a general manner.

"Recorded" shall mean recorded in the registry of deeds of the county or district in which the land in question is situated, except that, as affecting registered land, it shall mean filed with the recorder of the land court.

"Register of deeds" shall mean the register of deeds of the county or district in which the land in question, or the city or town in question, is situated, and, when appropriate, shall include the recorder of the land court.

"Registered mail" shall mean registered or certified mail.

"Registry of deeds" shall mean the registry of deeds of the county or district in which the land in question is situated, and, when appropriate, shall include the land court.

"Subdivision" shall mean the division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more

lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in the city or town in which the land lies, having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by zoning or other ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least twenty feet. Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth, or the division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in the city or town in which the land lies into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision.

"Subdivision control" shall mean the power of regulating the subdivision of land granted by the subdivision control law.

Added by St.1953, c. 674, § 7. Amended by St.1955, c. 411, § 2; St.1956, c. 282; St.1957, c. 138, § 1; St.1957, c. 163; St.1958, c. 206, § 1; St.1961, c. 331; St.1963, c. 580; St.1965, c. 61; St.1979, c. 534.

§ 81M. Purpose of law

The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the cities and towns in which it is, or may hereafter be, put in effect by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas. The powers of a planning board and of a board of appeal under the subdivision control law shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies; for insuring compliance with the applicable zoning ordinances or by-laws; for securing adequate provision for water, sewerage, drainage, underground utility services, fire, police, and other similar municipal equipment, and street lighting and other requirements where necessary in a subdivision; and for coordinating the ways in a subdivision with each other and with the public ways in the city or town in which it is located and with the ways in neighboring subdivisions. Such powers may also be exercised with due regard for the policy of the commonwealth to encourage the use of solar energy and protect the access to direct sunlight of solar energy systems. It is the intent of the subdivision control law that any subdivision plan filed with the planning board shall receive the approval of such board if said plan conforms to the recommendation of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivisions of land; provided, however, that such board may, when appropriate, waive, as provided for in section eighty-one R, such portions of the rules and regulations as is deemed advisable.

Added by St.1953, c. 674, § 7. Amended by St.1957, c. 265; St.1969, c. 884, § 2; St.1985, c. 637, § 8.

§ 81N. Territorial extent of law; acceptance by municipalities

Except as provided in section eighty-one EE, the subdivision control law shall be in effect in every city, except Boston, and every town, which prior to the first day of January, nineteen hundred and fifty-four, established a planning board as defined in section eighty-one L, or which after said date establishes a planning board under section eighty-one A unless such city or town by vote of its city council or town meeting at the time of establishment of such board shall vote not to accept the provisions of the subdivision control law. Any such city or town which shall have voted not to accept such provisions may thereafter accept such provisions in the manner provided in section four of chapter four, and any city or town having a board of survey, however established, may accept such provisions in such manner, and the subdivision control law shall be similarly in effect in such cities and

towns. In any city or town which has not established a planning board under section eighty-one A, but which has a board of survey, however established, and has prior to the first day of January, nineteen hundred and fifty-four, accepted corresponding provisions of the subdivision control law, or shall after said date accept the provisions of the subdivision control law in such manner, the board of survey shall have all the powers and be subject to all the duties of a planning board relating to subdivision control. In every city and town in which the subdivision control law is in effect the provisions of sections eighty-one K to eighty-one GG, as the same may from time to time be in force, shall, notwithstanding any contrary or inconsistent provision of any general or special law, apply in such city or town irrespective of whether the board having such powers is established under section eighty-one A or under any other general or special law. The subdivision control law, however, shall not become effective in any city or town in which it was not in effect on the first day of January, nineteen hundred and fifty-four, until the planning board of such city or town shall have notified the register of deeds and the recorder of the land court that the city or town has accepted the provisions of the subdivision control law and that the planning board has adopted its rules and regulations as provided in section eighty-one Q and shall have furnished the said register and recorder with a copy of the vote of the city council or town meeting under which the provisions of the subdivision control law were accepted in such city or town, certified by the city or town clerk, and a copy of such rules and regulations certified by said clerk.

Added by St.1953, c. 674, § 7. Amended by St.1957, c. 146; St.1959, c. 144.

§ 81O. Regulation of new subdivisions

No person shall make a subdivision of any land in any city or town in which the subdivision control law is in effect unless he has first submitted to the planning board of such city or town for its approval a plan of such proposed subdivision, showing the lots into which such land is to be divided and the ways already existing or which are to be provided by him for furnishing access to such lots, and the planning board has approved such plan in the manner hereinafter provided. After the approval of a plan the location and width of ways shown thereon shall not be changed unless the plan is amended accordingly as provided in section eighty-one W; but the number, shape and size of the lots shown on a plan so approved may, from time to time, be changed without action by the board, provided every lot so changed still has frontage on a public way or way shown on a plan approved in accordance with the subdivision control law of at least such distance, if any, as is then required by ordinance or by-law of said city or town for erection of a building on such lot, and if no distance is so required, has such frontage of at least twenty feet.

A plan shall be submitted under this section when delivered at a meeting of the board or when sent by registered mail to the planning board. If so mailed, the date of receipt shall be the date of submission of the plan.

Added by St.1953, c. 674, § 7. Amended by St.1963, c. 804; St.1994, c. 169.

§ 81P. Approval of plans not subject to control law; procedure

Any person wishing to cause to be recorded a plan of land situated in a city or town in which the subdivision control law is in effect, who believes that his plan does not require approval under the subdivision control law, may submit his plan to the planning board of such city or town in the manner prescribed in section eighty-one T, and, if the board finds that the plan does not require such approval, it shall forthwith, without a public hearing, endorse thereon or cause to be endorsed thereon by a person authorized by it the words "approval under the subdivision control law not required" or words of similar import with appropriate name or names signed thereto, and such endorsement shall be conclusive on all persons. Such endorsement shall not be withheld unless such plan shows a subdivision. If the board shall determine that in its opinion the plan requires approval, it shall within twenty-one days of such submittal, give written notice of its determination to the clerk of the city or town and the person submitting the plan, and such person may submit his plan for approval as provided by law and the rules and regulations of the board, or he may appeal from the determination of the board in the manner provided in section eighty-one BB. If the board fails to act upon a plan submitted under this section or fails to notify the clerk of the city or town and the person submitting the plan of its action within twenty-one days after its submission, it shall be deemed to have determined that approval under the subdivision control law is not required, and it shall forthwith make such endorsement on said plan, and on its failure to do so

forthwith the city or town clerk shall issue a certificate to the same effect. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the planning board, or in case of the certificate, by the city or town clerk, to the person submitting such plan. The planning board of a city or town which has authorized any person, other than a majority of the board, to endorse on a plan the approval of the board or to make any other certificate under the subdivision control law, shall transmit a written statement to the register of deeds and the recorder of the land court, signed by a majority of the board, giving the name of the person so authorized.

The endorsement under this section may include a statement of the reason approval is not required. Added by St.1953, c. 674, § 7. Amended by St.1955, c. 326, §§ 1, 2; St.1957, c. 293, §§ 1, 2; St.1960, c. 197; St.1961, c. 332; St.1963, c. 363, § 1; St.1987, c. 122.

§ 81Q. Planning board; adoption of rules and regulations

After a public hearing, notice of the time and place of which, and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing, a planning board shall adopt, and, in the same manner, may, from time to time, amend, reasonable rules and regulations relative to subdivision control not inconsistent with the subdivision control law or with any other provisions of a statute or of any valid ordinance or by-law of the city or town. Such rules and regulations may prescribe the size, form, contents, style and number of copies of plans and the procedure for the submission and approval thereof, and shall be such as to enable the person submitting the plan to comply with the requirements of the register of deeds for the recording of the same, and to assure the board of a copy for its files; and shall set forth the requirements of the board with respect to the location, construction, width and grades of the proposed ways shown on a plan and the installation of municipal services therein, which requirements shall be established in such manner as to carry out the purposes of the subdivision control law as set forth in section eighty-one M. Such rules and regulations shall not require referral of a subdivision plan to any other board or person prior to its submission to the planning board. In establishing such requirements regarding ways, due regard shall be paid to the prospective character of different subdivisions, whether open residence, dense residence, business or industrial, and the prospective amount of travel upon the various ways therein, and to adjustment of the requirements accordingly; provided, however, that in no case shall a city or town establish rules or regulations regarding the laying out, construction, alteration, or maintenance of ways within a particular subdivision which exceed the standards and criteria commonly applied by that city or town to the laying out, construction, alteration, or maintenance of its publicly financed ways located in similarly zoned districts within such city or town. Such rules and regulations may set forth a requirement that a turnaround be provided at the end of the approved portion of a way which does not connect with another way. Any easement in any turnaround shown on a plan approved under the subdivision control law which arises after January first, nineteen hundred and sixty, other than an easement appurtenant to a lot abutting the turnaround, shall terminate upon the approval and recording of a plan showing extension of said way, except in such portion of said turnaround as is included in said extension, and the recording of a certificate by the planning board of the construction of such extension. Such rules and regulations may set forth a requirement that underground distribution systems be provided for any and all utility services, including electrical and telephone services, as may be specified in such rules and regulations, and may set forth a requirement that poles and any associated overhead structures, of a design approved by the planning board, be provided for use for police and fire alarm boxes and any similar municipal equipment and for use for street lighting. The rules and regulations may encourage the use of solar energy systems and protect to the extent feasible the access to direct sunlight of solar energy systems. Such rules and regulations may include standards for the orientation of new streets, lots and buildings; building set back requirements from property lines; limitations on the type, height and placement, of vegetation; and restrictive covenants protecting solar access not inconsistent with existing local ordinances or by-laws. Except in so far as it may require compliance with the requirements of existing zoning ordinances or by-laws, no rule or regulation shall relate to the size, shape, width,

frontage or use of lots within a subdivision, or to the buildings which may be constructed thereon, or shall be inconsistent with the regulations and requirements of any other municipal board acting within its jurisdiction. No rule or regulation shall require, and no planning board shall impose, as a condition for the approval of a plan of a subdivision, that any of the land within said subdivision be dedicated to the public use, or conveyed or released to the commonwealth or to the county, city or town in which the subdivision is located, for use as a public way, public park or playground, or for any other public purpose, without just compensation to the owner thereof. The rules and regulations may, however, provide that not more than one building designed or available for use for dwelling purposes shall be erected or placed or converted to use as such on any lot in a subdivision, or elsewhere in the city or town, without the consent of the planning board, and that such consent may be conditional upon the providing of adequate ways furnishing access to each site for such building, in the same manner as otherwise required for lots within a subdivision. A true copy of the rules and regulations, with their most recent amendments, shall be kept on file available for inspection in the office of the planning board of the city or town by which they were adopted, and in the office of the clerk of such city or town. A copy certified by such clerk of any such rules and regulations, or any amendment thereof, adopted after the first day of January, nineteen hundred and fifty-four shall be transmitted forthwith by such planning board to the register of deeds and recorder of the land court. Once a definitive plan has been submitted to a planning board, and written notice has been given to the city or town clerk pursuant to section eighty-one T and until final action has been taken thereon by the planning board or the time for such action prescribed by section eighty-one U has elapsed, the rules and regulations governing such plan shall be those in effect relative to subdivision control at the time of the submission of such plan. When a preliminary plan referred to in section eighty-one S has been submitted to a planning board, and written notice of the submission of such plan has been given to the city or town clerk, such preliminary plan and the definitive plan evolved therefrom shall be governed by the rules and regulations relative to subdivision control in effect at the time of the submission of the preliminary plan, provided that the definitive plan is duly submitted within seven months from the date on which the preliminary plan was submitted.

Added by St.1953, c. 674, § 7. Amended by St.1955, c. 370; St.1956, c. 307; St.1957, c. 139; St.1958, c. 206, § 3; St.1959, c. 410; St.1960, c. 196; St.1960, c. 417; St.1965, c. 64; St.1969, c. 884, § 3; St.1981, c. 459; St.1985, c. 637, § 9; St.1992, c. 133, § 372; St.1996, c. 450, § 98.

§ 81R. Waiver of strict compliance with rules and regulations

A planning board may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the subdivision control law, waive strict compliance with its rules and regulations, and with the frontage or access requirements specified in said law, and may, where the ways are not otherwise deemed adequate, approve a plan on conditions limiting the lots upon which buildings may be erected and the number of buildings that may be erected on particular lots and the length of time for which particular buildings may be maintained without further consent by the planning board to the access provided. The planning board shall endorse such conditions on the plan to which they relate, or set them forth in a separate instrument attached thereto to which reference is made on such plan and which shall for the purpose of the subdivision control law be deemed to be a part of the plan.

Added by St.1953, c. 674, § 7. Amended by St.1955, c. 411, § 1.

§ 81S. Submission of preliminary plan; approval or disapproval; recording

In the case of a subdivision showing lots in a residential zone, any person, before submitting his definitive plan for approval, may submit to the planning board and to the board of health, a preliminary plan, and shall give written notice to the clerk of such city or town by delivery or by registered mail, postage prepaid, that he has submitted such plan.

In the case of a nonresidential subdivision, any person before submitting his definitive plan for approval shall submit to the planning board and the board of health, a preliminary plan, and shall give notice to the clerk of such city or town by delivery or by registered mail, postage prepaid, that he has submitted such plan.

In either case, if the notice is given by delivery, the city or town clerk shall, if requested, give a

written receipt therefor. Within forty-five days after submission of a preliminary plan, each board shall notify the applicant and the clerk of the city or town, by certified mail, either that the plan has been approved, or that the plan has been approved with modifications suggested by the board or agreed upon by the person submitting the plan, or that the plan has been disapproved and in the case of disapproval, the board shall state in detail its reasons therefor. The planning board shall notify the city or town clerk of its approval or disapproval, as the case may be. Except as is otherwise provided, the provisions of the subdivision control law relating to a plan shall not be applicable to a preliminary plan, and no register or [1] deeds shall record a preliminary plan.

Added by St.1953, c. 674, § 7. Amended by St.1957, c. 138, § 2; St.1958, c. 206, § 2; St.1959, c. 189; St.1963, c. 206; St.1964, c. 105, § 1; St.1986, c. 699, § 1.

[1] So in enrolled bill; probably should read "of".

§ 81T. Notice of submission of plan; hearing

Every person submitting a definitive plan of land to the planning board of a city or town for its approval or for a determination that approval is not required shall give written notice to the clerk of such city or town by delivery or by registered mail, postage prepaid, that he has submitted such a plan. If the notice is given by delivery the clerk shall, if requested, give a written receipt therefor to the person who delivered such notice. Such notice shall describe the land to which the plan relates sufficiently for identification, and shall state the date when such plan was submitted and the name and address of the owner of such land; and the facts stated in such notice shall be taken by the city or town clerk as true, unless the contrary is made to appear. Before approval, modification and approval, or disapproval of the definitive plan is given, a public hearing shall be held by the planning board, notice of the time and place of which and of the subject matter, sufficient for identification, shall be given by the planning board at the expense of the applicant by advertisement in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication being not less than fourteen days before the day of such hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing, and by mailing a copy of such advertisement to the applicant and to all owners of land abutting upon the land included in such plan as appearing on the most recent tax list; provided, however, that when the planning board is also the special permit granting authority for a special permit applicable to the plan, the planning board may hold the definitive plan public hearing together with the public hearing required by section 9 of chapter 40A and allow for the publication of a single advertisement giving notice of the consolidated hearing.

Added by St.1953, c. 674, § 7. Amended by St.1957, c. 122; St.1960, c. 266, § 1; St.1962, c. 207, § 1; St.1963, c. 363, § 2; St.2008, c. 239, § 2, eff. Nov. 2, 2008.

§ 81U. Approval, modification or disapproval of plan by board; prerequisites for decision

When a definitive plan of a subdivision is submitted to the planning board, as provided in section eighty-one *O*, a copy thereof shall also be filed with the board of health or board or officer having like powers and duties. Such health board or officer shall, within forty-five days after the plan is so filed, report to the planning board in writing, approval or disapproval of said plan, and, in the event of disapproval, shall make specific findings as to which, if any, areas shown on such plan cannot be used for building sites without injury to the public health, and include such specific findings and the reasons therefor in such report, and where possible, shall make recommendations for the adjustments thereof. Failure of such board or officer to report shall be deemed approval by such board or officer. Such health board or officer shall send a copy of such report, if any, to the person who submitted said plan. When the definitive plan shows that no public or community sewer is to be installed to serve any lot thereon, approval by a board of health or officer shall not be treated as, nor deemed to be approval of a permit for the construction and use on any lot of an individual sewage system; and approval of a definitive plan for a subdivision by a board of health or officer shall not be treated as, nor deemed to be, an application for a permit to construct or use an individual sewage system on any lot contained therein.

After the hearing required by section eighty-one T and after the report of said health board or officer or lapse of forty-five days without such report, the planning board shall approve, or, if such plan does not comply with the subdivision control law or the rules and regulations of the planning board or the recommendations of the

health board or officer, shall modify and approve or shall disapprove such plan. In the event of disapproval, the planning board shall state in detail wherein the plan does not conform to the rules and regulations of the planning board or the recommendations of the health board or officer and shall revoke its disapproval and approve a plan which, as amended conforms to such rules and regulations or recommendations. The planning board shall file a certificate of its action with the city or town clerk, a copy of which shall be recorded by him in a book kept for the purpose, and shall send notice of such action by registered mail, postage prepaid, to the applicant at his address stated on the application.

If the report of the board of health or board or officer having like powers and duties shall so require, the approval by the planning board shall be on condition that no building or structure shall be built or placed upon the areas designated without consent by such board of health or officer. In the event approval by the board of health or board or officer having like powers and duties is by failure to make a report, the planning board shall note on the plan that health approval is by failure to report.

In the case of a nonresidential subdivision where a preliminary plan has been duly submitted and acted upon or where forty-five days has elapsed since submission of the said preliminary plan, and then a definitive plan is submitted, the failure of a planning board either to take final action or to file with the city or town clerk a certificate of such action regarding the definitive plan submitted by an applicant within ninety days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed forthwith by the planning board with the city or town clerk.

In the case of a subdivision showing lots in a residential zone, where a preliminary plan has been acted upon by the planning board or where at least forty-five days has elapsed since submission of the preliminary plan, an applicant may file a definitive plan. The failure of a planning board either to take final action or to file with the city or town clerk a certificate of such action on the definitive plan within ninety days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed forthwith by the planning board with the city or town clerk.

In the case of a subdivision showing lots in a residential zone, where no preliminary plan has been submitted and acted upon or where forty-five days has not elapsed since submission of such preliminary plan, and a definitive plan is submitted, the failure of a planning board either to take final action or to file with the city or town clerk a certificate of such action regarding the definitive plan submitted by an applicant within one hundred thirty-five days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed forthwith by the planning board with the city or town clerk.

Before endorsement of its approval of a plan, a planning board shall require that the construction of ways and the installation of municipal services be secured by one, or in part by one and in part by another, of the methods described in the following clauses (1), (2), (3) and (4) which method or combination of methods may be selected and from time to time varied by the applicant:

(1) By a proper bond, sufficient in the opinion of the planning board to secure performance of the construction of ways and the installation of municipal services required for lots in the subdivision shown on the plan, and the planning board may require that the applicant specify the time within which such construction shall be completed.

(2) By a deposit of money or negotiable securities, sufficient in the opinion of the planning board to secure performance of the construction of ways and the installation of municipal services required for lots in the subdivision shown on the plan, and the planning board may require that the applicant specify the time within which such construction shall be completed.

(3) By a covenant, executed and duly recorded by the owner of record, running with the land, whereby such ways and services shall be provided to serve any lot before such lot may be built upon or conveyed, other than by mortgage deed; provided, that a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of such premises or part thereof may sell any such lot, subject to that portion of the covenant which provides that no lot shall be built upon until such ways and services have been provided to serve such lot; and provided, further, that nothing herein shall be deemed to prohibit a conveyance by a single deed, subject to

such covenant, of either the entire parcel of land shown on the subdivision plan or of all lots not previously released by the planning board. A deed of any part of the subdivision in violation hereof shall be voidable by the grantee prior to the release of the covenant but not later than three years from the date of such deed.

(4) By delivery to the planning board of an agreement executed after the recording of a first mortgage covering the premises shown on the plan or a portion thereof given as security for advances to be made to the applicant by the lender, which agreement shall be executed by the applicant and the lender and shall provide for the retention by the lender of funds sufficient in the opinion of the planning board and otherwise due the applicant, to secure the construction of ways and the installation of municipal services. Said agreement shall also provide for a schedule of disbursements which may be made to the applicant upon completion of various stages of the work, and shall further provide that in the event the work is not completed within the time set forth by the applicant, any funds remaining undisbursed shall be available for completion.

Any covenant given under the preceding paragraph and any condition required by the health board or officer shall be either inscribed on the plan or contained in a separate document, referred to on the plan.

The penal sum of any such bond held under clause (1) or any deposit held under clause (2) or any amount of funds retained pursuant to an agreement under clause (4) shall bear a direct and reasonable relationship to the expected cost including the effects of inflation, necessary to complete the subject work. Such amount or amounts shall from time to time be reduced so that the amount bonded, deposited or retained continues to reflect the actual expected cost of work remaining to be completed.

Upon the completion of the construction of ways and the installation of municipal services in accordance with the rules and regulations of the planning board, security for the performance of which was given by bond, deposit or covenant, or upon the performance of any covenant with respect to any lot, the applicant shall send by registered mail to the city or town clerk and the planning board a written statement that the said construction or installation in connection with which such bond, deposit or covenant has been given has been completed in accordance with said rules and regulations, such statement to contain the address of the applicant. If the planning board determines that said construction or installation has been completed, it shall release the interest of the town in such bond and return the bond or the deposit to the person who furnished the same, or release the covenant by appropriate instrument, duly acknowledged, which may be recorded. If the board determines that said construction or installation has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the clerk of the city or town the details wherein said construction or installation fails to comply with its rules and regulations and upon failure so to do within forty-five days after the receipt by said clerk of said statement all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned and any such covenant shall become void. In the event that said forty-five day period expires without such specification, or without the release and return of the bond or return of the deposit or release of the covenant as aforesaid, the said clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

Any such bond may be enforced and any such deposit may be applied by the planning board for the benefit of such city or town, as provided in section eighty-one Y, upon failure of the performance for which any such bond or deposit was given to the extent of the reasonable cost to such city or town of completing such construction and installation.

In any town which accepts the provisions of this paragraph, the proceeds of any such bond or deposit shall be made available to the town for expenditure to meet the cost and expenses of the municipality in completing the work as specified in the approved plan. If such proceeds do not exceed one hundred thousand dollars, the expenditure may be made without specific appropriation under section fifty-three of chapter forty-four; provided, however, that such expenditure is approved by the board of selectmen. The provisions of this paragraph shall not apply to cities or to towns having town councils.

Before approval of a plan by a planning board, said board shall also in proper cases require the plan to show a park or parks suitably located for playground or recreation purposes or for providing light and air and not unreasonable in area in relation to the area of the land being subdivided and the prospective uses of such land, and if so

determined said board shall by appropriate endorsement on the plan require that no building may be erected on such park or parks for a period of not more than three years without its approval.
Added by St.1953, c. 674, § 7. Amended by St.1955, c. 324; St.1958, c. 377, § 1; St.1960, c. 153; St.1960, c. 266, § 2; St.1963, c. 299; St.1963, c. 581; St.1964, c. 105, § 2; St.1965, c. 62; St.1967, c. 567; St.1972, c. 749, §§ 1, 2; St.1978, c. 422, §§ 1, 2; St.1981, c. 421, §§ 1 to 3; St.1986, c. 699, § 2; St.1987, c. 236; St.1988, c. 245; St.1990, c. 177, § 125.

§ 81V. Final approval of plan; endorsements; certificate

In case of approval of a plan by action of the planning board, after the expiration of twenty days without notice of appeal to the superior court or the land court, or if appeal has been taken after the entry of a final decree of the court sustaining the approval of such plan, the planning board shall cause to be made upon the plan a written endorsement of its approval. In case of the approval of a plan by reason of the failure of the planning board to act within the time prescribed, the city or town clerk shall, after the expiration of twenty days without notice of appeal to the superior court or the land court, or, if appeal has been taken, after receipt of certified records of the superior court or the land court indicating that such approval has become final, issue a certificate stating the date of the submission of the plan for approval, the fact that the planning board failed to take final action and that the approval resulting from such failure has become final. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the planning board, or, in the case of the certificate, by the city or town clerk, to the person who submitted such plan. Except as provided in section eighty-one E, the existence of an official map in a city or town shall not affect the operation of the subdivision control law therein.
Added by St.1953, c. 674, § 7. Amended by St.2002, c. 393, § 4.

§ 81W. Modification, amendment or rescission of approval of plan; conditions

A planning board, on its own motion or on the petition of any person interested, shall have power to modify, amend or rescind its approval of a plan of a subdivision, or to require a change in a plan as a condition of its retaining the status of an approved plan. All of the provisions of the subdivision control law relating to the submission and approval of a plan of a subdivision shall, so far as apt, be applicable to the approval of the modification, amendment or rescission of such approval and to a plan which has been changed under this section.

No modification, amendment or rescission of the approval of a plan of a subdivision or changes in such plan shall affect the lots in such subdivision which have been sold or mortgaged in good faith and for a valuable consideration subsequent to the approval of the plan, or any rights appurtenant thereto, without the consent of the owner of such lots, and of the holder of the mortgage or mortgages, if any, thereon; provided, however, that nothing herein shall be deemed to prohibit such modification, amendment or rescission when there has been a sale to a single grantee of either the entire parcel of land shown on the subdivision plan or of all the lots not previously released by the planning board.

So far as unregistered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect until (1) the plan as originally approved, or a copy thereof, and a certified copy of the vote of the planning board making such modification, amendment, rescission or change, and any additional plan referred to in such vote, have been recorded, (2) an endorsement has been made on the plan originally approved as recorded referring to such vote and where it is recorded, and (3) such vote is indexed in the grantor index under the names of the owners of record of the land affected. So far as registered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect, until such modification, amendment or change has been verified by the land court pursuant to chapter one hundred and eighty-five, and in case of rescission, or modification, amendment or change not so verified, until ordered by the court pursuant to section one hundred and fourteen of said chapter one hundred and eighty-five.
Added by St.1953, c. 674, § 7. Amended by St.1973, c. 605; St.1977, c. 473.

§ 81X. Requirements for registration of plan

No register of deeds shall record any plan showing a division of a tract of land into two or more lots, and ways, whether existing or proposed, providing access thereto, in a city or town in which the subdivision control law is in force unless (1) such plan bears an endorsement of the planning board of such city or town that such plan has been

approved by such planning board, and a certificate by the clerk of such city or town, is endorsed on the plan, or is separately recorded and referred to on said plan, that no notice of appeal was received during the twenty days next after receipt and recording of notice from the planning board of the approval of the plan, or, if an appeal was taken, that a final decree has been entered by the court sustaining the approval of the plan, or (2) such plan bears an endorsement of the planning board that approval of such plan is not required, as provided in section eighty-one P, or (3) the plan is accompanied by a certificate of the clerk of such city or town that it is a plan which has been approved by reason of the failure of the planning board to act thereon within the time prescribed, as provided in sections eighty-one U and eighty-one V, or that it is a plan submitted pursuant to section eighty-one P and that it has been determined by failure of the planning board to act thereon within the prescribed time that approval is not required, and a reference to the book and page where such certificate is recorded is made on said plan; and, unless, in case of plans approved, the endorsement or certificate is dated within six months of the date of the recording, or there is also endorsed thereon or recorded therewith and referred to thereon a certificate of the planning board or city or town clerk, dated within thirty days of the recording, that the approval has not been modified, amended or rescinded, nor the plan changed. Such certificate shall upon application be made by the board of by the clerk unless the records of the board or clerk receiving the application show that there has been such modification, amendment, rescission or change. The planning board of a city or town which has authorized any person, other than a majority of the board, to endorse on a plan the approval of the board or to make any other certificate under the subdivision control law, shall transmit a written statement to the register of deeds and the recorder of the land court, signed by a majority of the board, giving the name of the person so authorized.

The contents of any such endorsement of the planning board or certificate by the clerk of the city or town shall be final and conclusive on all parties, subject to the provisions of section eighty-one W.

Such register and recorder shall each keep in a place open for public inspection a book which shall be a public record in which the name of each city or town in which, according to notices sent him by the board having powers of subdivision control in such city or town the subdivision control law is or may be in effect, shall be separately indexed and in which shall be entered all notices from such board or the board of appeal of such city or town relating to subdivision control, including copies of the rules and regulations of such boards. Such register and recorder may each accept for record any plan of land, otherwise appropriate for record, in a city or town of which the board having powers of subdivision control has not sent him notice that the subdivision control law is in effect in such city or town, without requiring the approval of the planning board of such city or town, or a certificate that no approval is necessary.

Notwithstanding the foregoing provisions of this section, the register of deeds shall accept for recording and the land court shall accept with a petition for registration or confirmation of title any plan bearing a certificate by a registered land surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of streets and ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown. The recording of any such plan shall not relieve any owner from compliance with the provisions of the subdivision control law or of any other applicable provision of law.

No register of deeds or recorder of the land court shall accept for record a notice of modification, amendment or rescission of approval of a plan of a subdivision unless such notice contains a statement by the planning board that such modification, amendment or rescission does not affect any lot or rights appurtenant thereto in such subdivision which lot was conveyed or mortgaged in good faith and for valuable consideration subsequent to the approval of the subdivision plan.

Added by St.1953, c. 674, § 7. Amended by St.1958, c. 207; St.1960, c. 189; St.1962, c. 313; St.1966, c. 380; St.1967, c. 248.

§ 81Y. Restrictions on construction of public ways, improvements and buildings; liability of grantors, etc.; court jurisdiction

In any city or town in which the subdivision control law is in effect, no public way shall be laid out, accepted or constructed, and no municipal service or improvement shall be constructed in a way within a subdivision, to serve the land therein, unless such way appears on a plan of such subdivision approved under such law, except by or in

accordance with the affirmative vote of two thirds of those present and voting at a meeting of the city council or at a town meeting.

In any city or town in which the subdivision control law is in effect, the board or officer, if any, having the power and duty to issue permits for the erection of buildings shall not issue any permit for the erection of a building until first satisfied that the lot on which the building is to be erected is not within a subdivision, or that a way furnishing the access to such lot as required by the subdivision control law is shown on a plan recorded or entitled to be recorded under section eighty-one X, and that any condition endorsed thereon limiting the right to erect or maintain buildings on such lot have been satisfied, or waived by the planning board, and in the event that the planning board has by rule or regulation required that not more than one building for dwelling purposes be erected or placed or converted to use as such on any lot without its consent, until satisfied that such consent has been obtained. In any city or town in which the subdivision control law is in effect in which there is no board or officer having the power and duty to issue permits for the erection of buildings, no building shall be erected within a subdivision without written permission from the planning board of the city or town. Such permission shall be given when it appears that the subdivision control law, so far as applicable, has been complied with. If, however, the enforcement of the foregoing provisions of this paragraph would entail practical difficulty or unnecessary hardship, and if the circumstances of the case do not require that the building be related to a way shown on such plan, the board of appeal provided for in section eighty-one Z shall have power by vote of a majority of its members to issue a permit for the erection of such building, subject to the provisions of said section eighty-one Z and sections eighty-one AA and eighty-one BB.

If a subdivision of land has been made in a city or town while the subdivision control law is in effect in such city or town without a plan thereof recorded or entitled to be recorded under section eighty-one K, the person or persons executing and delivering the deed, mortgage or other instrument by which such subdivision was made shall be liable to each owner of such land or any part thereof who acquired title without notice or knowledge of such division having been made, for all damages sustained by such owner by reason of such failure to comply, in an action brought within one year after such delivery. Any person owning a lot in a subdivision, approval of which was required by the subdivision control law but not obtained, who did not make the subdivision and acquired title without notice or knowledge of the lack of such approval, may submit a plan of said lot and of the ways giving access thereto to the planning board, and such plan shall be acted upon in the same manner and with the same effect, so far as affects said lot and the rights of access appurtenant thereto, as a plan of a subdivision.

The superior court for the county in which the land affected by any of the provisions of the subdivision control law lies and the land court shall have jurisdiction in equity on petition of the planning board of a city or town, or of ten taxable inhabitants thereof, to review any action of any municipal board or officer of such city or town in disregard of the provisions of this section and to annul and enjoin such action, to enjoin the erection of a building in violation of this section, and otherwise to enforce the provisions of the subdivision control law and any rules or regulations lawfully adopted and conditions on the approval of a plan lawfully imposed thereunder, and may restrain by injunction violations thereof or make such decrees as justice and equity may require. No proceeding under this paragraph shall be instituted more than one year after the act or failure to act upon which such petition is based.

Added by St.1953, c. 674, § 7. Amended by St.2002, c. 393, § 5.

§ 81Z. Board of appeals; membership; tenure; removal; vacancies; jurisdiction

A city or town in which the subdivision control law is in effect shall, by ordinance or by-law, provide for a board of appeals, which shall have jurisdiction to issue a permit for the erection of a building under section eighty-one Y. Such board of appeals may be the existing board of appeals under the local building or zoning ordinance or by-law; provided, that if the board of appeals under the local zoning ordinance or by-law in any city or town is also the planning board in such city or town, it shall not act as a board of appeals under the subdivision control law. The mayor or selectmen shall appoint the members of the board of appeals within three months of the adoption of the ordinance or by-law. Pending appointment of the members of the board of appeals the city council or selectmen shall act as a board of appeals. Any board of appeals newly established hereunder shall consist of at least three members, who shall be

appointed in a city by the mayor subject to the confirmation of the city council, or in a town by the selectmen, for terms of such length and so arranged that the term of one member shall expire each year; and said board shall elect annually a chairman from its own members and a clerk. Any board so newly established may also act as a board of appeals under the local building or zoning ordinance or by-law, or under both.

Any member of such a board of appeals may be removed for cause by the appointing authority upon written charges and after a public hearing. Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments. Ordinances or by-laws adopted hereunder may provide for the appointment in like manner of associate members of the board of appeals; and the chairman of the board may designate any such associate member to sit on the board in case of the absence, inability to act or interest on the part of a member thereof, or in the event of a vacancy on said board may designate any such associate member to sit as a member of the board until said vacancy is filled in the manner provided in this section.

Added by St.1953, c. 674, § 7. Amended by St.1957, c. 134; St.1958, c. 201.

§ 81AA. Board of appeals; rules; meetings; powers and duties; hearings

The board of appeals appointed under section eighty-one Z shall adopt rules not inconsistent with this section and sections eighty-one Y and eighty-one Z, for conducting its business and otherwise carrying out the purposes of said sections. Meetings of the board shall be held at the call of the chairman and also when called in such other manner as it shall determine in its rules. Such chairman, or, in his absence, the acting chairman, may administer oaths, summon witnesses and call for the production of papers. All hearings of the board shall be open to the public. The board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or, if any member is absent or fails to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions, and of its other official acts, copies of all of which shall be immediately filed in the office of the city or town clerk and shall be public records.

Before taking any action under section eighty-one Y, the board of appeals shall hold a hearing at which parties in interest shall have an opportunity to be heard, in person or by agent or attorney. Notice of the time and place of such hearing and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing. The board may require the appellant to pay the expense of giving such notice. The board may, as a condition of granting a permit under section eighty-one Y, impose reasonable requirements designed to promote the health, convenience, safety and general welfare of the community and to benefit the city or town.

Added by St.1953, c. 674, § 7. Amended by St.1960, c. 198; St.1962, c. 207, § 2.

§ 81BB. Appeal to superior court; counsel; costs; surety or bond; speedy trial

Any person, whether or not previously a party to the proceedings, or any municipal officer or board, aggrieved by a decision of a board of appeals under section eighty-one Y, or by any decision of a planning board concerning a plan of a subdivision of land, or by the failure of such a board to take final action concerning such a plan within the required time, may appeal to the superior court for the county in which said land is situated or to the land court; provided, that such appeal is entered within twenty days after such decision has been recorded in the office of the city or town clerk or within twenty days after the expiration of the required time as aforesaid, as the case may be, and notice of such appeal is given to such city or town clerk so as to be received within such twenty days. The court shall hear all pertinent evidence and determine the facts, and upon the facts so determined, shall annul such decision if found to exceed the authority of such board, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, but the parties shall have all rights of appeal and exceptions as in other equity cases.

A city or town may provide any municipal officer or board with legal counsel for appealing, as provided in this section, a decision of a board of appeals or a planning board and for taking such other subsequent action as parties in other equity cases are permitted to take.

Costs shall not be allowed against the planning board or board of appeals unless it shall appear that such board acted with gross negligence or in bad faith.

The court shall require nonmunicipal appellants to post a surety or cash bond in a sum of not less than two thousand nor more than fifteen thousand dollars to secure the payment of any costs incurred by the appellee as a result of the appeal of a decision approving a subdivision plan if it appears to the court that said appellant or appellants acted in bad faith or with malice in making the appeal to the court.

All issues in any proceeding under this section may be advanced for speedy trial over other civil actions and proceedings.

Added by St.1953, c. 674, § 7. Amended by St.1955, c. 348; St.1957, c. 199, § 2; St.1982, c. 533, § 2; St.1985, c. 492, § 2; St.2002, c. 393, § 6.

§ 81CC. Powers of planning boards; entry on lands

Planning boards and their officers and agents may, as far as they deem it necessary in carrying out the subdivision control law, enter upon any lands and there make examinations and surveys and place and maintain monuments and marks.

Added by St.1953, c. 674, § 7.

§ 81DD. Application of law; damages

The subdivision control law shall not abridge the powers of the city council, of the selectmen, or any other municipal officer, in regard to public ways in any manner except as herein provided, and shall not authorize the taking of land nor authorize a city or town to lay out or construct any way which may be indicated on any plan of a subdivision until such way has been laid out as a public way in the manner prescribed by law; nor shall action under such law render a city or town liable for damages; provided, however, any person injured in his property by reason of the modification, amendment or rescission of the approval of a plan under section eighty-one W without his consent in writing, or by entry of his land not within the limits of a subdivision as shown on a preliminary or definitive plan submitted by him for approval, may recover the damages so caused under chapter seventy-nine. The modification, amendment or rescission of the approval of a plan shall not entitle any person to damages, unless and to the extent that he shall have changed his position or made expenditures in reliance upon such approval. No damages shall be awarded for the modification, amendment or rescission of the approval of a plan obtained as a result of material misrepresentation of facts, whether willful or otherwise, by the persons submitting the plan.

Added by St.1953, c. 674, § 7.

§ 81EE. Recordation; evidence that subdivision control law is in effect; suspension

Every board having on the first day of January, nineteen hundred and fifty-four, powers of subdivision control shall, within sixty days thereafter transmit to the register of deeds and the recorder of the land court a statement stating that in the opinion of such board the subdivision control law is in effect in such city or town, including a copy certified by the clerk of such city or town of the vote of the city council or of the town meeting under which the subdivision control law in the opinion of such board went into effect, together with the date thereof, or a reference to any special statute under which subdivision control was established, in such city or town. The register of deeds and the recorder of the land court shall enter such statement in the book which he is required to keep under section eighty-one X. Unless such statement is transmitted as herein provided within sixty days after said date, or the clerk of such city or town has previously notified the register of deeds and recorder of the land court of the establishment of a planning board under the provisions of law in effect prior to said date, and included in his notice a statement of the date of such establishment, the operation of the subdivision control law in and in respect to such city or town shall be suspended until the clerk of such city or town has notified the register of deeds and recorder of the land court that the subdivision control law is in effect in his city or town in the manner provided in section eighty-one N. The register of deeds and the recorder of the land court shall each enter such notice in his records in the manner provided in section eighty-one X. Any planning board having powers of subdivision control on the first day of January, nineteen hundred and fifty-four, shall, within sixty days thereafter, transmit to the register of deeds and recorder of the land court a certified copy of its rules and regulations relating to subdivision control, which shall be kept by him in the same manner as copies of rules and regulations thereafter adopted, and unless such copy is so

transmitted, the operation of the subdivision control law in and with respect to such city or town shall be suspended until the board so transmits such copy.

Added by St.1953, c. 674, § 7.

§ 81FF. Application of subdivision control law on registered and unregistered land; jurisdiction of land court

So far as land which has not been registered in the land court is affected by the subdivision control law, recording of the plan of a subdivision in the registry of deeds before the subdivision control law was in effect in the city or town in which the subdivision was located shall not exempt the land within such subdivision from the operation of said law except with respect to lots which had been sold and were held in ownership separate from that of the remainder of the subdivision when said law went into effect in such city or town, and to rights of way and other easements appurtenant to such lots; and plans of subdivisions which were recorded in the registry of deeds and subdivisions made without the recording of a plan after said law had gone into effect in such city or town and before February first, nineteen hundred and fifty-two, without receiving the approval of the planning board of such city or town, shall have the same validity and effect as if the subdivision control law became effective in such city or town on February first, nineteen hundred and fifty-two, as above provided.

So far as land which has been registered in the land court is affected by said law, any plan of a subdivision which has been registered or confirmed by said court before February first, nineteen hundred and fifty-two, whether the subdivision control law was in effect in the city or town in which the subdivision was located or not, and whether the plan of the subdivision was approved by the planning board or not, shall have the same validity in all respects as if said plan had been so approved, but the land court shall not register or confirm a plan of a subdivision in a city or town in which the subdivision control law is in effect which has been filed on or after February first, nineteen hundred and fifty-two, unless it has first verified the fact that the plan filed with it has been approved by the planning board, or would otherwise be entitled if it had related to unregistered land, to be recorded in the registry of deeds. The land court shall have jurisdiction in so far as affects land registered or to be registered or confirmed under chapter one hundred and eighty-five, to determine whether the subdivision control law has been complied with, and shall verify before registering or confirming any plan of land in any city or town in which the subdivision control law is in effect, that the plan filed with it is entitled to be recorded in accordance with the subdivision control law, and every plan heretofore or hereafter registered or confirmed by the land court pursuant to said chapter one hundred and eighty-five shall for the purposes of the subdivision control law be deemed to be, and shall be invested with all the rights and privileges of, a plan approved pursuant to said law. In case of conditions imposed pursuant to section eighty-one R or eighty-one U of said law, and set forth or referred to by endorsement on the plan filed with it, the land court shall cause said conditions to be set forth or referred to on the plan prepared by it therefrom for registration or confirmation, or in the decree of registration or confirmation or certificate of title issued for the land shown thereon.

Added by St.1953, c. 674, § 7.

§ 81GG. Powers of planning boards established under prior law; severability provision

Any planning board having powers of subdivision control under corresponding provisions of earlier laws shall have all of the powers and be subject to all of the duties of a planning board with respect to subdivision control under sections eighty-one K to eighty-one FF, inclusive, without any further action by such city or town. If any provision of sections eighty-one K to eighty-one GG, inclusive, known as the subdivision control law, or in the administration thereof, shall be held to be unconstitutional, it shall not affect any other provision of said sections or the administration thereof.

Added by St.1953, c. 674, § 7.

§ 82. Authority to establish art commissions

Cities and towns which accept this section or have accepted corresponding provisions of earlier laws may, except where their charters make special provisions therefor, establish art commissions in accordance with the two following sections. In cities such acceptance shall be by the city council and in towns at an annual town meeting.

Historical and Statutory Notes

St.1911, c. 146, §§ 1, 7.

§ 83. Appointment; membership; compensation; tenure; removal

Within sixty days after the acceptance of the preceding section, the school committee, the board of trustees of the public library and the board of park commissioners, or the members of three similar boards designated by the town at the time of such acceptance, shall each send in writing to the mayor or the selectmen the names of two citizens of the town, and the mayor or selectmen shall, as soon as may be, appoint from the persons so nominated an art commission of three members to serve without compensation, one to serve until the first day of May succeeding the appointment, one to serve until one year from said first of May, and one to serve until two years from said first of May. Thereafter, prior to the first day of April in each year, the several boards designated shall each send in writing to the mayor or selectmen the name of one citizen of the town, and the mayor or selectmen shall, from the persons so nominated, appoint one member to serve for three years from the first day of May in that year or until a successor is qualified. The members so appointed may be removed in cities by a vote of two thirds of the city council and in towns by a vote of two thirds of the voters at an annual town meeting; and thereafter section eighty-two shall not apply to such city or town unless again accepted as provided therein.

Historical and Statutory Notes

St.1911, c. 146, §§ 2, 6.

§ 84. Powers and duties; penalty

In any town which has accepted section eighty-two or corresponding provisions of earlier laws, no municipal structure shall be erected, and no work of art or ornament or object of utility, except authorized structures of public service corporations and public watering troughs or drinking fountains not constituting works of art or ornament, shall be placed on any public ways or on any public lands other than cemeteries, and no work of art or object of decoration shall be placed in or upon any public or municipal building or be removed, relocated or altered, unless the design thereof or the action to be taken therewith shall have been approved in writing by the art commission, or unless said commission shall have failed to disapprove the same in writing within thirty days after its submission. Whoever violates the provisions of this section shall be punished by a fine of not more than two hundred dollars.

Historical and Statutory Notes

St.1911, c. 146, §§ 3 to 5.

§ 85. Weighers, measurers and surveyors of goods or commodities; appointment; qualifications; tenure; removal

The mayor or the selectmen, on the written request of any person engaged in buying, selling or transporting goods or commodities which require weighing, surveying or measuring, shall appoint weighers, measurers or surveyors of such goods or commodities, who shall be sworn before entering upon their duties, shall serve for one year, and may be removed at any time by the appointing authority. At least one such weigher, measurer and surveyor in each town shall not be engaged in the business of buying, selling or transporting the goods or commodities weighed, measured or surveyed by him, but no person shall be ineligible for appointment because of sex or because of residence elsewhere than in the town where appointed, notwithstanding any provisions to the contrary in any general or special act.

Historical and Statutory Notes

St.1918, c. 65, § 1.

§ 86. Powers and duties; penalty for misrepresentation

All persons appointed under section eighty-five shall keep accurate records, in the form prescribed by the director of standards, of all weighings, measurements or surveys made by them, which shall at all reasonable times be open to inspection by said director and his inspectors and by the local sealer of weights and measures. If any person so appointed shall wilfully misrepresent the weight, quantity or measurements of any goods weighed, measured or surveyed by him, he shall be punished by a fine of not more than one hundred dollars.
Amended by St.1939, c. 261, § 5; St.1968, c. 467, § 5.

Historical and Statutory Notes

St.1918, c. 65, §§ 2, 3.
St.1918, c. 218, § 1.
St.1919, c. 350, §§ 69, 77.

§ 87. Applicability of Secs. 85 and 86 to weighers, etc., of particular commodities

The two preceding sections shall not affect the provisions of law for the appointment of weighers, measurers or surveyors of particular commodities.

Historical and Statutory Notes

St.1918, c. 65, § 4.

§ 87A. Weighers and measurers of motor vehicles and trailers; appointment

The director of standards, upon the written request of the colonel of state police, shall appoint any of those persons appointed under section ten of chapter twenty-two C as weighers and measurers of motor vehicles and trailers and of the loads of such vehicles and trailers. Before entering upon their duties, such weighers and measurers shall be sworn. Such officers shall serve as long as they have the powers of police officers or until said colonel shall in writing request the director to revoke such appointment.

Added by St.1954, c. 386. Amended by St.1968, c. 467, § 6; St.1974, c. 851, § 1; St.1991, c. 412, § 48.

§ 87B. Repealed, 1974, 851, Sec. 2

Historical and Statutory Notes

See c. 41, § 87A.

§ 88. Weighers of fish

The mayor of each city, and the selectmen of each town, where salt water fish are landed from vessels, shall annually appoint a public weigher of fish, to hold office for one year from the time of his appointment and until his successor is appointed, who shall be sworn to the faithful performance of his official duties and shall give bond, with sureties, in the sum of five thousand dollars.

Historical and Statutory Notes

St.1888, c. 163, § 1.
R.L.1902, c. 56, § 29.

§ 89. Deputy weighers of fish

A public weigher of fish may appoint, subject to the approval of the mayor or the chairman of the selectmen, deputy weighers, for whose official conduct he shall be answerable, who shall be sworn, and from each of whom such weigher shall require a bond, with sureties, in the sum of one thousand dollars. The weigher and his deputies shall not be interested directly or indirectly in the buying or selling of fish.

Historical and Statutory Notes

St.1888, c. 163, § 2.
R.L.1902, c. 56, § 30.

§ 90. Weighers of fish; penalty for violation of oath of office

A weigher or any of his deputies who violates his oath of office shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, and shall forfeit his office.

Historical and Statutory Notes

St.1888, c. 163, § 6.
R.L.1902, c. 56, § 34.

§ 90A. Interfering with fish weigher or deputies; penalty

Whoever hinders, or obstructs, or in any way interferes with a public weigher of fish or any of his deputies, in the performance of their official duties, shall be punished by a fine of not more than fifty dollars.

Added by St.1957, c. 178.

§ 91. Constables; appointment and removal in cities

In a city in which the city council accepts this section, or has accepted corresponding provisions of earlier laws, constables shall be appointed by the mayor for terms not exceeding three years. The mayor may, with the consent of the board of aldermen, remove a constable from office for gross misconduct.

Amended by St.1962, c. 89.

Historical and Statutory Notes

St.1859, c. 294.
G.S.1860, c. 19, § 3.
P.S.1882, c. 28, § 8.
St.1898, c. 208.
R.L.1902, c. 26, §§ 12, 13.

§ 91A. Constables; appointment in towns

The selectmen in any town may from time to time appoint, for terms not exceeding three years, as many constables as they deem necessary.

Amended by St.1961, c. 354, § 2.

Historical and Statutory Notes

St.1924, c. 82, § 1.

§ 91B. Appointments; qualifications; application; investigation

Constables shall not be appointed by mayors or selectmen under section ninety-one or ninety-one A except as hereinafter provided. A person desiring to be appointed as aforesaid shall make a written application therefor to the appointing authority stating his reasons for desiring such appointment and such information as may be reasonably required by said authority relative to his fitness for said office. Such application shall also contain a statement as to the moral character of the applicant signed by at least five reputable citizens of the

city or town of his residence, one of whom shall be an attorney-at-law. The appointing authority shall also investigate the reputation and character of every applicant and his fitness for said office. The chief of police or other official having charge of the police shall upon request give the appointing authority all possible assistance in making such investigation. The office of constable shall be filled only by appointment of an applicant hereunder who is found by the appointing authority, after investigation as aforesaid, to be a person of good repute and character and qualified to hold said office.
Added by St.1933, c. 128.

§ 92. Service of civil process

A constable who has given bond to the town in a sum of not less than one thousand dollars, with sureties approved by the selectmen, conditioned for the faithful performance of his duties in the service of all civil processes committed to him, and has filed the same, with the approval of the selectmen endorsed thereon, with the town clerk, may within his town serve any writ or other process in a personal action in which the damages are not laid at a greater sum than two hundred dollars, and in replevin in which the subject matter does not exceed in value two hundred dollars, and any writ or other process under chapter two hundred and thirty-nine. A constable who has filed such a bond, in a sum of not less than five thousand dollars, may, within his town, also serve any such writ or other process in which the damages are laid at a sum not exceeding $7,000, and any process in replevin in which the subject matter does not exceed in value $7,000.
Amended by St.1965, c. 228; St.1968, c. 74; St.1971, c. 1061; St.1972, c. 237; St.1978, c. 478, § 33; St.1979, c. 311; St.1985, c. 680, § 1; St.2010, c. 240, § 106, eff. Aug. 1, 2010.

Historical and Statutory Notes

St.1845, c. 70, § 1.
St.1847, c. 98, § 2.
St.1851, c. 94, §§ 1, 2.
G.S.1860, c. 18, § 61.
St.1870, c. 149.
St.1872, c. 268.
P.S.1882, c. 27, §§ 113, 114.
St.1893, c. 423, §§ 27, 28.
St.1900, c. 213.
R.L.1902, c. 25, §§ 88, 89.

§ 93. Remedies on bond

The town clerk shall note upon every bond given by a constable the time of filing. Any person injured by a breach of the condition thereof may, at his own expense, sue thereon in the name of the town, and the proceedings shall be the same as in an action by a creditor on an administrator's bond. The writ shall be endorsed by him and, if he is not a resident of the commonwealth, it shall also be endorsed by a responsible resident thereof. If judgment is for the defendant, execution shall issue for costs against the endorser as if he were a plaintiff of record.

Historical and Statutory Notes

St.1845, c. 70, §§ 1 to 3.
St.1851, c. 94, § 2.
G.S.1860, c. 18, § 62.
P.S.1882, c. 27, § 115.
St.1893, c. 423, § 29.
R.L.1902, c. 25, § 90.

§ 94. Powers and duties

Constables may serve the writs and processes described in section ninety-two and warrants and processes in criminal cases, although their town, parish, religious society or district is a party or interested. They shall have the powers of sheriffs to require aid in the execution of their duties. They shall take due notice of and prosecute all violations of law respecting the observance of the Lord's day, profane swearing and gaming. They shall serve all warrants and other processes directed to them by the selectmen of their town for notifying town meetings or for other purposes. They may serve by copy, attested by them, demands, notices and citations, and their returns of service thereof shall be prima facie evidence; but this provision shall not exclude the service thereof by other persons.

Historical and Statutory Notes

C.L. c. 31, § 2.
C.L. c. 150.
St.1692–3, c. 22, § 6.
St.1692–3, c. 28, § 11.
St.1711–12, c. 6, § 2.
St.1725–6, c. 3.
St.1785, c. 75, § 2.
St.1791, c. 58, § 12.
St.1795, c. 41, § 3.
St.1795, c. 68, § 1.
St.1798, c. 20, § 4.
St.1798, c. 33, § 2.
R.S.1836, c. 15, §§ 70, 72, 76, 77.
G.S.1860, c. 18, §§ 63 to 67.
P.S.1882, c. 27, §§ 116 to 120.
St.1893, c. 423, §§ 30 to 34.
R.L.1902, c. 25, § 91.

§ 95. Territorial jurisdiction

A constable, in the execution of a warrant or writ directed to him, may convey prisoners and property in his custody under such process beyond the limits of his town, either to the justice who issued it

or to the jail or house of correction of his county. If a warrant is issued against a person for an alleged crime committed within any town, any constable thereof to whom the warrant is directed may apprehend him in any place in the commonwealth.

Historical and Statutory Notes

St.1725–6, c. 3.
St.1795, c. 68, § 4.
R.S.1836, c. 15, § 75.
St.1847, c. 98, § 1.
G.S.1860, c. 18, §§ 68, 69.
P.S.1882, c. 27, §§ 121, 122.
St.1893, c. 423, §§ 35, 36.
R.L.1902, c. 25, §§ 92, 93.

§ 95A. Service of civil process fees

Constables appointed under sections 91, 91A, and 91B or otherwise elected to serve as constables in a city or town shall periodically pay the city or town in which the constable is appointed or elected 25 per cent of all fees the constable collects for the service of civil process under the fee structure established in section 8 of chapter 262. This payment shall be made in installments to be deposited with the city or town treasurer not later than January 15, April 15, July 15 and October 15 of each year, but a constable having less than $500 to deposit at that time shall hold the share for deposit until the sooner of October 15 or the time when the amount due to the city or town under this section equals or exceeds $500. A treasurer receiving funds under this section shall deposit them into the general fund of the city or town, and they shall be expended, subject to appropriation by a majority vote of the city council in a city or by a majority vote of town meeting in a town, for any purpose which the city or town considers necessary.

Added by St.2003, c. 46, § 20, eff. July 31, 2003. Amended by St.2003, c. 140, § 20, eff. Mar. 1, 2004; St.2006, c. 341, eff. Nov. 1, 2006.

§ 95B. Records of service of civil process fees

Each constable shall annually on or before April 15 file with the city or town treasurer an account signed under the penalties of perjury of all fees and money received by him under section 8 of chapter 262 for the service of civil process. Such account shall include an itemization of all civil process fees charged by the constable's civil process office, all revenue received from said fees and all amounts paid by the constable to any city or town treasurer on account of such civil process fees under section 95A.

Added by St.2003, c. 46, § 20, eff. July 31, 2003. Amended by St.2003, c. 140, § 21, eff. Nov. 26, 2003.

§ 96. Police officers; appointment; tenure; discharge

In any town in which such appointments are not subject to chapter thirty-one, they shall be made annually or for a term of years not exceeding three years, as the selectmen shall determine, and the selectmen may remove such officers for cause at any time during such appointment after a hearing.

Amended by St.1977, c. 246, § 1.

Historical and Statutory Notes

St.1851, c. 162.
G.S.1860, c. 18, § 38.
P.S.1882, c. 27, § 85.
St.1893, c. 423, § 7.
R.L.1902, c. 25, § 94.

§ 96A. Felons disqualified

No person who has been convicted of any felony shall be appointed as a police officer of a city, town or district.

Added by St.1938, c. 342.

§ 96B. Police training schools; supervisory training; attendance by persons exercising police powers; wages and expenses; exceptions; removal for failure to attend

Every person who receives an appointment to a position on a full-time basis in which he will exercise police powers in the police department of any city or town, shall, prior to exercising police powers, be assigned to and satisfactorily complete a prescribed course of study approved by the municipal police training committee. The provisions of chapter thirty-one and any collective bargaining agreement notwithstanding, any person so attending such a school shall be deemed to be a student officer and shall be exempted from the provisions of chapter thirty-one and any collective bargaining agreement for that period during which he is assigned to a municipal police training school, provided that such person shall be paid the regular wages provided for the position to which he was appointed and such reasonable expenses as may be determined by the appointing authority and be subject to the provisions of chapter one hundred and fifty-two.

Every police officer on a full-time basis in any such municipal police department, shall be assigned to and shall attend a prescribed course of study approved by the municipal police training committee for in-service officers training at such intervals and for such periods as said department may determine. Any such police officer who receives an appointment to a position of higher rank shall, in addition, complete such other courses of supervisory training as said committee may determine. While attending such school or completing such courses, such persons shall be paid his regular wages as a police officer and shall receive such reasonable expenses as may be determined by the appointing authority.

Each person appointed as a reserve, or intermittent police officer, in a city or town shall, prior to exercising police powers, satisfactorily complete a course of study prescribed by said committee.

Upon petition to the department of criminal justice training by the appointing authority, a person appointed to a position on a full-time basis in which he will exercise police powers in the police department of any city or town may be exempted by said committee, in whole or in part, from the provisions of this section prior to his exercising police powers. The requirement that training be completed prior to exercising any police powers may be waived by said committee.

Failure of an appointed person to comply with the provisions of this section prior to his exercising police powers, shall result in the appointed person's removal by the appointing authority, provided said person has not been exempted therefrom by said committee as herein provided. Failure of an appointed person to satisfactorily complete the prescribed course of study may result in his removal by the appointing authority.

Added by St.1964, c. 564, § 3. Amended by St.1967, c. 504; St.1968, c. 742; St.1969, c. 252, §§ 1, 2; St.1971, c. 172; St.1972, c. 697; St.1977, c. 932; St.1981, c. 760, § 10; St.1985, c. 231, §§ 20, 20A; St.1991, c. 412, §§ 49, 50; St.1994, c. 333; St.2002, c. 196, §§ 17, 18.

§ 97. Police departments; establishment

In towns which accept this section or have accepted corresponding provisions of earlier laws there shall be a police department established under the direction of the selectmen, who shall appoint a chief of police and such other police officers as they deem necessary, and fix their compensation in an amount not in the aggregate exceeding the annual appropriation therefor. In any such town in which such appointments are not subject to chapter thirty-one, they shall be made annually or for a term of years not exceeding three years, as the selectmen shall determine, and the selectmen may remove such chief or other officers for cause at any time during such appointment after a hearing. The selectmen may make suitable regulations governing the police department and the officers thereof. The chief of police shall be in immediate control of all town property used by the department, and of the police officers, who shall obey his orders.

Amended by St.1977, c. 246, § 2.

Historical and Statutory Notes

St.1920, c. 591, §§ 22, 23, 25, 26.

§ 97A. Police departments; chief of police; powers and duties

In any town which accepts this section there shall be a police department established by the selectmen, and such department shall be under the supervision of an officer to be known as the chief of police. The selectmen of any such town shall appoint a chief of police and such other officers as they deem necessary, and fix their compensation, not exceeding, in the aggregate, the annual appropriation therefor. In any such town in which such appointments are not subject to chapter thirty-one, they shall be made annually or for a term of years not exceeding three years, as the selectmen shall determine, and the selectmen may remove such chief or other officers for cause at any time after a hearing. The chief of police in any such town shall from time to time make suitable regulations governing the police department, and the officers thereof, subject to the approval of the selectmen; provided, that such regulations shall become effective without such approval upon the failure of the selectmen to take action thereon within thirty days after they have been submitted to them by the chief of police. The chief of police in any such town shall be in immediate control of all town property used by the department, and of the police officers, whom he shall assign to their respective duties and who shall obey his orders. Section ninety-seven shall not apply in any town which accepts the provisions of this section. Acceptance of the provisions of this section shall be by a vote at an annual town meeting.

Added by St.1948, c. 540. Amended by St.1948, c. 595; St.1975, c. 336.

§ 97B. Rape reporting and prosecution units within police departments; training and funding; personnel; preservation of evidence

There shall be within the police department of every city and town, or grouping of cities and towns with the approval of the secretary of the executive office of public safety, a rape reporting and prosecution unit which shall be designed to improve the quality of rape reporting, counselling, and prosecution. Said units shall consist of police investigators who shall have completed a course of training in the counselling of victims of rape and the prosecution of alleged perpetrators of the crime of rape which shall be approved and funded by the municipal police training committee established by section one hundred and sixteen of chapter six. Each department shall make efforts to employ women police officers to serve in said units. A victim of rape who is male shall, whenever possible, be interviewed initially by a male police officer, and a victim of rape who is female shall, whenever possible, be interviewed initially by a woman police officer. Each unit shall in addition make use of such counselors, attorneys, and medical personnel as are necessary to provide a broad range of therapeutic services for victims of rape.

Each unit shall provide personnel with training in the use of a standardized kit for the collection and preservation of evidence in rape cases. Such kit shall be designed by said municipal police training committee and shall include instructions, standardized reporting forms, and appropriate receptacles for the collection and preservation of evidence for laboratory and police use. Each kit shall also include medically and factually accurate written information prepared by the commissioner of public health about emergency contraception.

A hospital licensed pursuant to the provisions of chapter one hundred and eleven shall inform a victim of rape that the evidence of rape preserved in said kit shall be kept for a period of at least six months upon the written request of the victim at the time the evidence is obtained upon forms provided to such victim by such hospital.

Added by St.1974, c. 581, § 3. Amended by St.1979, c. 217; St.1980, c. 195; St.1985, c. 355; St.2002, c. 196, §§ 19, 20; St.2005, c. 91, § 1, eff. Dec. 14, 2005.

§ 97C. Special telephone exchange for reporting of rape

Each rape reporting and prosecution unit shall, in addition to the services provided in section ninety-seven B, establish a special telephone exchange for the reporting of rape which may be utilized at any hour of day or night and shall widely publicize this number and information concerning the activities of the unit throughout the city or town.

Added by St.1974, c. 581, § 3.

§ 97D. Confidentiality of reports of rape and related offenses; violations; penalties

All reports of rape and sexual assault or attempts to commit such offenses and all conversations between police officers and victims of said offenses shall not be public reports and shall be maintained by the police departments in a manner which will assure their confidentiality. Whoever violates any provision of this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or both.

Added by St.1974, c. 581, § 3.

§ 97E. Chief of police; attendance at conventions

In any city or town which accepts the provisions of this section, the chief of police may, without loss of pay or vacation time, attend the annual convention of the New England Association of Chiefs of Police and the annual convention of the International Association of Chiefs of Police.

Added by St.1981, c. 94.

§ 97F. Firefighter duties; performance by police

No city or town shall require a member of its police department, or other employee with police powers, to perform the duties of a firefighter during his tour of duty; provided, however, that nothing in this section shall prohibit any such member from serving as a call or volunteer firefighter, or from responding to an emergency in the normal course of his duties. No police officer, or other employee with police powers, shall, in connection with any industrial or labor dispute, perform the duties of a firefighter or any duties other than those regularly assigned to him.

Added by St.1988, c. 232.

§ 98. Powers and duties

The chief and other police officers of all cities and towns shall have all the powers and duties of constables except serving and executing civil process. They shall suppress and prevent all disturbances and disorder. They may carry within the

commonwealth such weapons as the chief of police or the board or officer having control of the police in a city or town shall determine; provided, that any law enforcement officer of another state or territory of the United States may, while on official business within the commonwealth, carry such weapons as are authorized by his appointing authority. They may examine all persons abroad whom they have reason to suspect of unlawful design, and may demand of them their business abroad and whither they are going; may disperse any assembly of three or more persons, and may enter any building to suppress a riot or breach of peace therein. Persons so suspected who do not give a satisfactory account of themselves, persons so assembled and who do not disperse when ordered, and persons making, aiding and abetting in a riot or disturbance may be arrested by the police, and may thereafter be safely kept by imprisonment or otherwise unless released in the manner provided by law, and taken before a district court to be examined and prosecuted.

Whoever is arrested and charged with any offense committed during a riot, disturbance or mass demonstration may be fingerprinted, in accordance with the protocol of the identification system of the department of the state police and may be photographed.

If a police officer stops a person for questioning pursuant to this section and reasonably suspects that he is in danger of life or limb, he may search such person for a dangerous weapon. If he finds such weapon or any other thing the possession of which may constitute a crime, he may take and keep it until the completion of the questioning, at which time he shall return it, if lawfully possessed, or he shall arrest such person.

Amended by St.1953, c. 319, § 9; St.1954, c. 162, § 1; St.1957, c. 688, § 1; St.1967, c. 368, §§ 1, 2; St.1970, c. 181; St.1996, c. 151, § 199.

Historical and Statutory Notes

St.1851, c. 162.
G.S.1860, c. 18, § 38.
P.S.1882, c. 27, § 85.
St.1893, c. 423, § 7.
R.L.1902, c. 25, § 94.
St.1920, c. 591, § 24.

§ 98A. Arrest on fresh and continued pursuit

A police officer of a city or town who is empowered to make arrests within a city or town may, on fresh and continued pursuit, exercise such authority in any other city or town for any offence committed in his presence within his jurisdiction for which he would have the right to arrest within his jurisdiction without a warrant. Said officer may return any person so arrested to the jurisdiction wherein said offence was committed. Nothing contained in this section shall be construed as limiting the powers of a police officer to make arrests and in so far as possible this section shall be deemed to be declaratory of the common law of the commonwealth.

Added by St.1967, c. 263.

§ 98B. Foot patrol

In every city or town which has a population of forty thousand or more and which accepts the provisions of this section there shall be at all times a minimum of one police officer on foot patrol for every ten thousand inhabitants or major portion thereof.

"On foot patrol", as used in this section, shall mean an assignment to patrol a certain area on foot.

Added by St.1968, c. 233.

§ 98C. Badges; identification by name or number

In any city or town which accepts the provisions of this section no uniformed police officer, and no other uniformed person empowered to make arrests, employed by such city or town shall be required to wear a badge, tag or label of any kind which identifies him by name, but any such officer or other person employed by such city or town who does not wear any such badge, tag or label shall wear a badge, tag or label which identifies him by number.

Added by St.1970, c. 628.

§ 98D. Identification cards

Each city or town shall issue to every full-time police officer employed by it an identification card bearing the officer's photograph and identifying information. The secretary of public safety and security may adopt regulations relative to the form, content and issuance of such identification cards and to the carrying thereof by municipal police officers. Such identification card shall be carried on the officer's person and shall be exhibited upon lawful request for purposes of identification.

Added by St.1971, c. 231. Amended by St.2010, c. 461, § 2, eff. Jan. 14, 2011.

§ 98E. Public solicitations using words "police" or "firefighters"

No person or persons shall solicit the public in any manner or form using the word "police" or "firefighter" or any derivative thereof without using the name or names of the city or town police or firefighters organization sponsoring such solicitation.

Added by St.1977, c. 587.

§ 98F. Daily logs; public records

Each police department and each college or university to which officers have been appointed pursuant to the provisions of section sixty-three of chapter twenty-two C shall make, keep and maintain a daily log, written in a form that can be easily understood, recording, in chronological order, all responses to valid complaints received, crimes reported, the names, addresses of persons arrested and the charges against such persons arrested. All entries in said daily logs shall, unless otherwise provided in law, be public records available without charge to the public during regular business hours and at all other reasonable times; provided, however, that any entry in a log which pertains to a handicapped individual who is physically or mentally incapacitated to the degree that said person is confined to a wheelchair or is bedridden or requires the use of a device designed to provide said person with mobility, shall be kept in a separate log and shall not be a public record nor shall such entry be disclosed to the public.

Added by St.1980, c. 142. Amended by St.1991, c. 125; St.1992, c. 286, § 122; St.1994, c. 353, § 1.

§ 98G. Domestic abuse; police reports

Any city, town or district police department which requires an investigating police officer to make a report concerning an incident, offense or alleged offense investigated, or any arrest made, on a form provided by the department, shall include on said form a space to indicate whether said incident, offense, alleged offense or arrest involved abuse as defined in section one of chapter two hundred and nine A.

Added by St.1987, c. 93, § 2.

§ 99. Requisition of police officers by other towns

The mayor, selectmen, chief of police, or person however designated having the duties of a chief of police, or, in the absence of the chief of police, or person however designated having the duties of a chief of police, the commanding officer, may upon the request of the mayor, selectmen, chief of police, or person however designated having the duties of a chief of police, or in the absence of the chief of police or person however designated having the duties of a chief of police, the commanding officer of any other city or town, provide police officers, who shall have the authority of constables and police officers within the limits of such city or town, except as to the service of civil process, and, while exercising such authority within such limits, shall have the same immunities and privileges as when acting within their respective cities and towns; and the city or town providing said officers shall be entitled to receive from such city or town the amount paid to them for their service, including their necessary traveling expenses.

Amended by St.1932, c. 124; St.1951, c. 214; St.1958, c. 53; St.1965, c. 382.

Historical and Statutory Notes

St.1880, c. 82.
P.S.1882, c. 28, § 11.
R.L.1902, c. 26, § 20.
St.1920, c. 591, § 13.

§ 99A. Members of regular police or fire department and fire alarm division; residence outside city or town

Any member of the regular police or fire department and fire alarm division of a city or town appointed subsequent to August first, nineteen hundred and seventy-eight shall reside within fifteen miles of the limits of said city or town. Said distance shall be measured from the closest border limits of said city or town in which said member is employed to the closest border limits of the city or town in which said member lives; provided however, if any said city or town by local ordinance or by-law to which the provisions of paragraph (d) of section seven of chapter one hundred and fifty E of the General Laws shall apply, or by collective bargaining agreement shall require the members of a regular police or fire department appointed on or after August first, nineteen hundred and seventy-eight to be residents of such city or town, the provision of such local ordinance, by-law or collective bargaining agreement shall supersede the provision of this section and provided further such local ordinance, by-law or collective bargaining agreement shall apply only to those members of a

regular police or fire department appointed subsequent to the adoption of such local ordinance, by-law or collective bargaining agreement.

Added by St.1965, c. 411. Amended by St.1971, c. 956, § 1; St.1978, c. 373, § 1; St.1981, c. 446.

§ 99B. Regional police district law; purpose of Secs. 99B to 99K

The purpose of this and the nine following sections, which shall be designated and may be known as "The regional police district law", is to permit two or more contiguous towns to establish a regional police district and organize a common police department to serve and protect the inhabitants of said towns.

Sections ninety-nine B to ninety-nine K, inclusive, shall not apply to any town in which the provisions of chapter thirty-one are in effect with respect to the members of the police force or the chief of police.

Added by St.1969, c. 878.

§ 99C. Establishment

Any group of contiguous towns may, by vote of their respective registered voters, vote to establish a regional police district, the area of jurisdiction of which shall be the combined corporate limits of the member towns.

Added by St.1969, c. 878.

§ 99D. Town elections for acceptance; ballots

In towns using official ballots at town elections, acceptance of the provisions of the regional police district law shall be by vote in answer to the following questions to be placed on the official ballot at an annual town election as hereinafter provided, and in towns not using official ballots at town elections such acceptance shall be by vote at an annual town meeting. Upon the filing, with the clerk of any town using official ballots at town elections, of a petition signed by the board of selectmen requesting that the question of accepting the provisions of the regional police district law be placed upon the official ballot, the clerk shall place such questions on the official ballot for the next town election occurring more than thirty days after the filing of such petition. The questions to be voted on shall be:—

A. Shall the town accept the provisions of sections ninety-nine B to ninety-nine K, inclusive, of chapter forty-one of the General Laws, providing for the establishment of a regional police district, together with the town (towns) of?	YES	
	NO	

B. Shall the police department provided for in question A be under the control and supervision of the regional police district commission and otherwise be governed by section ninety-seven of chapter forty-one of the General Laws governing local police department?	YES	
	NO.	

C. Shall the police department provided for in question A be under the sole control and supervision of the chief of police appointed by the regional police district commission and otherwise be governed by section ninety-seven A of chapter forty-one of the General Laws governing local police departments?	YES	
	NO	

If a majority of the voters in each town voting on question A is in the affirmative, the proposed regional police district shall be deemed to be established.

If a majority of all the votes cast in the affirmative in the towns voting on question B is greater than the majority voting in the affirmative on question C, then the police department so established will be governed by section ninety-seven of said chapter forty-one; however, if a majority of all the votes cast in the affirmative in the towns voting on question C is greater than the majority voting in the affirmative on question B, the police department so established will be governed by the provisions of section ninety-seven A of said chapter forty-one.

Added by St.1969, c. 878.

§ 99E. Powers and duties

A regional police district established under section ninety-nine D shall be a body politic and corporate with all the powers and duties conferred by law upon police departments, and with the following additional powers and duties:

(a) To adopt a name and a corporate seal, and the engraved or printed facsimile of such seal on a bond or note of the district shall have the same validity and effect as though such seal were impressed thereon.

(b) To sue and be sued, but only to the same extent and upon the same conditions that a town may sue or be sued.

(c) To acquire property within the towns comprising the district under the provisions of chapter seventy-nine and section fourteen of chapter forty for the purposes of the district, and to construct, reconstruct, add to, remodel, make extraordinary repairs to, equip, organize and operate a police facility or facilities for the benefit of the towns comprising the district, and to make any necessary contracts in relation thereto.

(d) To incur debt for the purpose of acquiring land and constructing, reconstructing, adding to and equipping a police building or buildings for a term of not exceeding twenty years or for the purpose of remodeling and making extraordinary repairs to a police building or buildings for a term not exceeding ten years; and provided, further, that written notice of the amount of the debt and of the general purposes for which it was authorized shall be given to the board of selectmen in each of the towns comprising the district not later than seven days after the date on which said debt was authorized by the district commission; and no debt may be incurred until the expiration of thirty days from the date on which said debt was so authorized; and prior to the expiration of said period any member town of the regional police district may hold a town meeting for the purpose of expressing disapproval of the amount of debt authorized by the district commission, and if at such meeting a majority of the voters present and voting thereon express disapproval of the amount authorized by the district commission, said debt shall not be incurred and the district police commission shall prepare another proposal which may be the same as any prior proposal and an authorization to incur debt therefor.

(e) To issue bonds and notes in the name and upon the full faith and credit of said district; said bonds or notes shall be signed by the chairman and treasurer of the regional police district commission, except that said chairman by a writing bearing his written signature and filed in the office of said treasurer, which writing shall be open to public inspection, may authorize said treasurer to cause to be engraved or printed on said bonds or notes a facsimile of said chairman's signature, and such facsimile signature so engraved or printed shall have the same validity and effect as said chairman's written signature, and each issue of bonds or notes shall be a separate loan.

(f) To receive and disburse funds for any district purpose.

(g) To incur temporary debt in anticipation of revenue to be received from member towns.

(h) To assess member towns for any expenses of the district.

(i) To receive any grants or gifts for the purposes of the regional district police.

(j) To engage legal counsel.

(k) To submit an annual report to each of the member towns, containing a detailed financial statement, and a statement showing the method by which the annual charges assessed against each town were computed, together with such additional information relating to the operation and maintenance of such police protection as may be deemed necessary by the district police commission or by the selectmen of any member town.

(*l*) To employ a chief of police who shall have all the powers and duties imposed upon chiefs of police by law.

(m) To adopt an annual operating and maintenance budget, not later than December first.

Added by St.1969, c. 878. Amended by St.2003, c. 46, § 21, eff. July 31, 2003.

§ 99F. Regional police district commission; membership; officers

The powers, duties and liabilities of a regional police district shall be vested in and exercised by a regional police district commission organized by the boards of selectmen of the member towns. Each said board shall appoint two members of the commission within three months of the adoption of the regional police district law, for terms of such length and so arranged that the term of one appointee will expire each year, and their successors shall be appointed in a like manner for terms of two years. Vacancies shall be filled in a like manner for the unexpired term. All members shall serve without compensation but may be reimbursed for expenses actually incurred in the transaction of the business of the commission. The commission shall choose annually a chairman and

a vice chairman by ballot from its membership. The vice chairman shall, in the absence of the chairman, exercise the powers and perform the duties of said chairman. It shall appoint a secretary and a treasurer who may be the same person, but who need not be members of said commission. The treasurer shall receive and take charge of all money belonging to the district, and shall pay any bill of the district which shall have been approved by the commission. The commission may appoint an assistant treasurer who need not be a member of the commission, and who shall, in the absence of the treasurer, perform his duties and shall have the powers and be subject to the requirements and penalties applicable to him. The treasurer and assistant treasurer may, by vote of said commission, be compensated for their services. The treasurer and assistant treasurer of said district shall be subject to the provisions of sections thirty-five, fifty-two and one hundred and nine A of chapter forty-one, to the extent applicable. If the office of secretary is vacant or if the secretary is absent or is unable to perform his duties because of disability, the commission may appoint a temporary secretary to hold such office and exercise the powers and perform the duties thereof until a secretary is duly appointed or the secretary who was disabled or absent resumes his duties.

Added by St.1969, c. 878.

§ 99G. Budget; apportionment; appropriations

The regional police district commission shall annually determine the amounts necessary to be raised to maintain and operate the district police during the ensuing calendar year, and the amounts required for payment of debt and interest incurred by the district which will be due in said year, and shall apportion the amount so determined among the member towns in accordance with the provisions of section ninety-nine *I*. The amounts so apportioned for each town shall, prior to December thirty-first in each year, be certified by the regional police district treasurer to the treasurers of the member towns. Each town shall, at the next annual town meeting, appropriate the amounts so certified and the town treasurer shall pay the amount so appropriated to said district forthwith.

The treasurer of any member town of a regional police district with the approval of the board of selectmen may, during the interval between January first and the date when such town makes the annual appropriation of the amount apportioned to it as provided in the first paragraph, make payments to the regional police district from the treasury of such town from any funds available therein. Such payments shall not exceed in the aggregate one third of the amount so apportioned and shall be charged against such appropriation.

For the purpose of organizing a department as provided in section ninety-nine J, the treasurer of any member town of a regional police district with the approval of the board of selectmen may, during the interval between the establishment of the commission as provided in section ninety-nine F and the following December thirty-first, make payments to the regional police district from the treasury of such town from any funds available therein. Such payments shall not exceed three thousand dollars per member town and shall be charged against the first annual appropriation.

Added by St.1969, c. 878.

§ 99H. Annual audits

The director of accounts in the department of revenue shall annually cause an audit to be made of the accounts of the regional police district commission, and for this purpose he, and his duly accredited agents, shall have access to all necessary papers, books and records. Upon the completion of each audit, a report thereon shall be made to the chairman of the selectmen of each town which is a member of the district. The director shall apportion the cost among the member towns on the basis provided by section ninety-nine *I*, and submit the amounts of each apportionment to the state treasurer who shall issue his warrant requiring the assessors of the towns which are members of the district to assess a tax to the amount of the expense, and such amounts shall be collected and paid to the state treasurer as provided by section twenty of chapter fifty-nine.

Added by St.1969, c. 878. Amended by St.1978, c. 514, § 25.

§ 99*I*. Costs and expenses; annual estimates; apportionment; assessment of towns

Said commission shall, annually not later than December first, estimate the amount of money required to pay the costs and expenses of the district for the following year and shall fix and determine the proportion of such costs and expenses to be paid by the member towns using the following formula:

Fifty per cent thereof shall be assessed upon all towns in the district in the proportion which the total equalized valuation in each said town bears to the total equalized valuation in the district. When used in this section "equalized valuation" shall mean the equalized valuation of the aggregate property in a town subject to local taxation, as most recently reported by the commissioner of revenue to the general court under the provisions of section ten C of chapter fifty-eight.

Twenty-five per cent thereof shall be assessed upon all towns in the district in the proportion which the number of inhabitants in each said town bears to the total number of inhabitants in the district. The number of inhabitants shall be determined in accordance with the last preceding federal census.

Twenty-five per cent thereof shall be assessed upon all towns in the district in the proportion which the total mileage of state highways and town ways in each said town, as most recently determined by the state department of highways, bears to the total mileage of state highways and town ways in the district.

Added by St.1969, c. 878. Amended by St.1978, c. 514, § 26; St.1991, c. 552, § 34.

§ 99J. Regional district police department; pending prosecutions; personnel transfers.

Each regional police district commission shall organize a regional district police department, and such department shall begin operations and otherwise take effect on January first following acceptance of the provisions of the regional police district law. Each regional district police department so established shall succeed any existing town police departments, whether fully organized or not, within its district, and each such town police department shall cease to exist on December thirty-first following the acceptance of the provisions of the regional police district law. Any pending criminal prosecutions of the police of the member towns shall be assumed by the regional district police department, and all town police employees who immediately prior to the effective date of the district held positions classified under chapter thirty-one or had tenure in their positions by special act shall be transferred to the service of the district police department upon the establishment of said department; every such transfer to be without impairment of civil service status, seniority, retirement and other rights of the employee, without interruption of his service within the meaning of said chapter thirty-one or special act, and without reduction in his compensation and salary grade, notwithstanding any change in his title or duties made as a result of such transfer. Said district police department shall be considered a single town police department as that phrase is used or implied in the general laws, and all general laws applicable to town police departments shall apply to such district police departments. If a majority of towns in said district shall vote to accept the provisions of chapter thirty-one, at annual elections held therein, with respect to such district, by the method provided in section fifty-four of said chapter, the provisions of said chapter shall apply to said district. Any such district department shall be under the supervision of an officer known as the chief of police.

The chief and other police officers of all regional police districts shall have, throughout their respective districts, unless a different meaning is clearly apparent from the language or context, all the powers, duties, immunities and privileges conferred by the General Laws on chiefs and police officers of the towns.

Added by St.1969, c. 878. Amended by St.1978, c. 393, § 18.

§ 99K. Revocation of acceptance of regional police district law; town elections; ballot; continuity of district

In towns using official ballots at town elections, revocation of the provisions of the regional police district law shall be by vote in answer to a question placed on the official ballot at an annual town election as hereinafter provided, and in towns not using official ballots at town elections such revocation shall be by vote at an annual town meeting. Upon the filing, with the clerk of any town using official ballots at town elections, of a petition signed either by the board of selectmen or by not less than five per cent of the total number of registered voters thereof, requesting that the question of revoking acceptance of the provisions of this law be placed upon the official ballot, the clerk shall place such question on the official ballot for the next town election occurring more than thirty days after the filing of such petition. The question to be voted on shall be:—"Shall the acceptance by the town of the provisions of sections ninety-nine B to ninety-nine K, inclusive, of chapter forty-one of the General Laws which provided for the establish-

ment of a regional police district, together with the town (towns) of , be revoked?"

If such revocation is favored by a majority of the voters voting thereon, the acceptance of this law by such town shall be revoked and this law shall become null and void in said town beginning one year after such vote; provided, however, if any such town while a member of the district voted to accept the provisions of chapter thirty-one with respect to said district, the provisions of said chapter thirty-one shall remain in effect in said town and any person transferred to said town from the district as a result of such revocation shall be transferred without impairment of civil service status, seniority, retirement and other rights, without interruption of his service within the meaning of said chapter thirty-one and without reduction in his compensation and salary grade, notwithstanding any change in his title or duties made as a result of such transfer.

Whenever a town revokes acceptance of this law and withdraws from a regional police district said town shall remain liable for its share of any obligation of the district incurred while said town was a member of said district.

Whenever a town revokes acceptance of this law and withdraws from a regional police district and thereby breaks the contiguity required by section ninety-nine C, the remaining towns shall continue to form a district notwithstanding the absence of contiguity.

Added by St.1969, c. 878. Amended by St.1978, c. 393, § 19.

§ 100. Indemnification of police officers, firemen and persons aiding them; actions for intentional or negligent injuries inflicted upon same

Upon application by a fire fighter or police officer of a city, town or fire or water district, or in the event of the physical or mental incapacity or death of such fire fighter or police officer, by someone in his behalf, the board or officer of such city, town or district authorized to appoint fire fighters or police officers, as the case may be, shall determine whether it is appropriate under all the circumstances for such city, town or district to indemnify such fire fighter or police officer for his reasonable hospital, medical, surgical, chiropractic, nursing, pharmaceutical, prosthetic and related expenses and reasonable charges for chiropody (podiatry) incurred as the natural and proximate result of an accident occurring or of undergoing a hazard peculiar to his employment, while acting in the performance and within the scope of his duty without fault of his own. If such board or officer determines that indemnification is appropriate, such board or officer shall certify for payment, either directly or by way of reimbursement, by such city, town or district, in the same manner as a bill lawfully incurred by such board or officer but out of an appropriation for the purposes of clause (32) of section five of chapter forty, such of said expenses as may be specified in such certificate. Whenever such board or officer denies an application in whole or in part, such board or officer shall set forth in writing its or his reasons for such denial and cause a copy thereof to be delivered to the applicant. At any time within two years after the filing of an application as aforesaid, an applicant aggrieved by any denial of his application or by the failure of such board or officer to act thereon within six months from the filing thereof may petition the superior court in equity to determine whether such board or officer has without good cause failed to act on such an application or, in denying the application, in whole or in part, has committed error of law or has been arbitrary or capricious, or has abused its or his discretion, or otherwise has acted not in accordance with law. After due notice and hearing, such court may order such board or officer to act on such application or to consider, or further consider, and determine the same in conformity with law.

Notwithstanding the provisions of section one hundred A or section one hundred D or any contrary provisions of any other general or special law, a city or town shall indemnify a police officer or fire fighter, to the extent and in the manner herein provided and subject to the same limitations, for expenses or damages incurred by him in the defence or settlement of a claim against him for acts done by him while operating a motor vehicle as such police officer or fire fighter.

For the purposes of this section, call firemen and volunteer firemen shall be considered fire fighters. This section shall be construed to require a city, town or district to indemnify, in the manner and to the extent herein provided, any fire fighter or police officer who is assigned to special duty by a superior officer for expenses or damages sustained by such fire fighter or police officer in the performance of such duty, whether or not he is paid for such special duty by the city, town or district, or otherwise. This section shall also be construed to

require a city, town or fire or water district to pay compensation, in the manner herein provided, for damages, including loss of pay, for personal injuries, whether or not death results, and for property damage sustained by a person while assisting a police officer thereof in the discharge of his duty upon his requirement, and to require a city, town or fire or water district to indemnity in the manner herein provided a person required to assist a police officer in the performance of his duty for expenses or damages incurred by such person in the defence or settlement of an action against him for acts done by him while so assisting such police officer.

In any city which by ordinance shall so provide, the powers vested, and duties imposed, by this section upon the board or officer authorized to appoint police officers, firemen or members of the fire department of such city shall be exercised and performed by a majority of the members of a panel consisting of (a) such officer or the chairman of such board, (b) the city solicitor or other officer having similar duties or a person designated in writing by such solicitor or officer to act for him, and (c) such physician as the city manager or, if there is none, the mayor shall in writing appoint.

In any town which by by-law shall so provide, the powers vested, and duties imposed, by this section upon the board or officer authorized to appoint fire fighters in such town shall be exercised and performed by a majority of the members of a panel consisting of (a) such officer or the chairman of such board, (b) the town counsel or other officer having similar duties or a person designated in writing by such counsel or officer to act for him, and (c) such physician as the board of selectmen shall in writing appoint.

Where the injury for which any payment is made under the provisions of this section by a city, town or fire or water district for reasonable hospital, medical, surgical, chiropractic, nursing, pharmaceutical, prosthetic and related expenses and reasonable charges for chiropody (podiatry) was caused under circumstances creating a legal liability in some person to pay damages in respect thereof, either the person so injured or the city, town or fire or water district making such payment may proceed to enforce the liability of such person in any court of competent jurisdiction. The sum recovered shall be for the benefit of the city, town or fire or water district making such payment, unless the sum is greater than such payment, in the event the excess shall be retained by or paid to the person so injured. For the purposes of this section, "excess" shall mean the amount by which the total sum received in payment for the injury, exclusive of interest and costs, exceeds the amount paid under this section. The party bringing the action shall be entitled to any costs recovered by him. Any interest received in such action shall be apportioned between the city, town or fire or water district and the person so injured in proportion to the amounts received by them respectively, exclusive of interest and costs. The expense of any attorney's fees shall be divided between the city, town or fire or water district and the person so injured in proportion to the amounts received by them respectively.

Whoever intentionally or negligently injures a firefighter or police officer for which he is paid indemnification under this section shall be liable in tort to the city, town or fire or water district for the amount of indemnification so paid.

Amended by St.1933, c. 324, § 3; St.1938, c. 298; St.1945, c. 670; St.1950, c. 337; St.1950, c. 398; St.1950, c. 412, § 1; St.1950, c. 550; St.1955, c. 168; St.1957, c. 342; St.1958, c. 267; St.1962, c. 580, § 1; St.1966, c. 322; St.1969, c. 879; St.1970, c. 27; St.1977, c. 646, § 1; St.1977, c. 880, § 1; St.1978, c. 512, § 9.

Historical and Statutory Notes

St.1888, c. 379.
St.1893, c. 186.
St.1900, c. 220.
R.L.1902, c. 26, § 21.
St.1910, c. 261.
St.1920, c. 591, § 14.
St.1927, c. 157.
St.1929, c. 192.

§ 100A. Repealed, 1978, 512, Sec. 10

§ 100B. Indemnification of retired police officers and fire fighters

Any city operating under a Plan D or Plan E charter which accepts this section by the affirmative vote of two thirds of all the members of its city council, and any other city which accepts this section by a majority vote of its city council with the approval of its mayor, and any town which accepts this section by a majority vote of its inhabitants at an annual town meeting or a special town meeting, may, upon written application by any of its police officers or fire fighters retired either before or after the acceptance of this section under a general or special law specifically relating to retirement for accidental disability, except a special law applicable to one person, or in the event of the death of any such police officer or fire fighter, upon written application by his widow or, if he leaves no

widow, by his next of kin, indemnify, out of any funds appropriated for the purposes of this section, such police officer or fire fighter or, in the event of his death, his widow, or if he leaves no widow, his next of kin, for all reasonable hospital, medical and surgical, chiropractic, nursing, pharmaceutical, prosthetic and related expenses and reasonable charges for podiatry incurred by such police officer or fire fighter after his retirement; provided, however, that no person shall be indemnified under this section unless a majority of the members of a panel consisting of (a) the chairman of the retirement board of the city or town, (b) the city solicitor, town counsel or other officer having similar duties or a person designated in writing by such solicitor, counsel or officer to act for him, and (c) such physician as the city or town manager or, if there is none, the mayor or selectmen in writing appoint shall, upon receipt from the applicant of due proof, certify:—(1) that the expenses for which indemnification is sought were the natural and proximate result of the disability for which the police officer or fire fighter was retired; (2) that such expenses were incurred after the acceptance of this section; (3) that the hospital, medical and surgical, chiropractic, nursing, pharmaceutical, prosthetic and related expenses and reasonable charges for podiatry to which such expenses relate were rendered within six months before the filing of the application; (4) that such expenses were in no ways attributable to the use by the police officer or fire fighter of any intoxicating liquor or drug or to his being gainfully employed after retirement or to any other willful act or conduct on his part; and (5) that such expenses are reasonable under all the circumstances.

Added by St.1953, c. 628, § 1. Amended by St.1961, c. 152, § 1; St.1970, c. 227; St.1972, c. 317; St.1973, c. 266; St.1982, c. 584.

§§ 100C to 100F. Repealed, 1978, 512, Sec. 10

§ 100G. Payment of funeral and burial expenses of fire fighters and police officers killed in performance of duties; acceptance of section

Any city operating under a Plan D or Plan E charter, by the affirmative vote of a majority of its city council or any other city, by a majority vote of its city council with the approval of its mayor, and any town, by a majority vote at an annual or special town meeting, shall pay the reasonable expense, not exceeding two thousand dollars, of the funeral and burial of any firefighter who while in the performance of his duty and as a result of an accident while responding to or returning from an alarm or fire or any emergency or as the result of an accident involving a fire department vehicle, which the firefighter is operating or in which he is riding or while at the scene of a fire or any emergency is killed or sustains injuries which result in his death, or of any police officer who while in the performance of his duty and as the result of an assault on his person, or a result of an accident while responding to an emergency while in the performance of his official duty or as result of an accident involving a police department vehicle which he is operating or in which he is riding is killed or sustains injuries which result in his death. The provisions of this section shall become effective in a city or town when accepted by such city or town.

Added by St.1971, c. 310. Amended by St.1973, c. 200; St.1978, c. 192.

§ 100G¼. Payment of funeral and burial expenses of firefighters and police officers killed in performance of duties; acceptance of section

Any city operating under a Plan D or Plan E charter, by the affirmative vote of a majority of its city council or any other city, by a majority vote of its city council with the approval of its mayor, and any town, by a majority vote at an annual or special town meeting, shall pay the reasonable expense, not exceeding $15,000, of the funeral and burial of any firefighter while in the performance of his duty and as a result of an accident while responding to or returning from an alarm or fire or any emergency or as the result of an accident involving a fire department vehicle, which the firefighter is operating or in which he is riding or while at the scene of a fire or any emergency is killed or sustains injuries which result in his death, or of any police officer who while in the performance of his duty and as the result of an assault on his person, or a result of an accident while responding to an emergency while in the performance of his official duty or as result of an accident involving a police department vehicle which he is operating or in which he is riding is killed or sustains injuries which result in his death. No payment shall be made under this section in the absence of adequate documentation that such expense has actually been incurred. The provisions

of this section shall become effective in a city or town when accepted by such city or town.

In those cities or towns which accept the provisions of this section, the provisions of section one hundred G shall not be applicable.

Added by St.1987, c. 176. Amended by St.2007, c. 110, §§ 1, 2, eff. Aug. 15, 2007.

§ 100G½. Attendance by police officers at police association executive board meetings; acceptance of section

Members of the police department in a city, town or district may be excused from duty without loss of compensation while in attendance of meetings of the executive board of the Massachusetts police association, when such regular meetings are held during the regular tour of duty of such member. The provisions of this section shall become effective in a city or town when accepted by such city or town and in a district when accepted by a majority of the towns comprising such district.

Added by St.1979, c. 477.

§ 100H. Indemnification of law enforcement officers for dogs used in connection with official duties

If an action is brought against a law enforcement officer because of damage caused by a dog which said officer was caring for or maintaining in connection with his official duties, the political subdivision employing said officer shall indemnify him for expenses or damages incurred in the settlement or defense of such action; provided that in the case of an officer employed by a city or town such settlement or defense shall have been made by the city solicitor or town counsel or by an attorney legally employed for the purpose by a city or town.

Added by St.1972, c. 495, § 1.

§§ 100*I*, 100J. Repealed, 1978, 512, Sec. 10

§ 101. Commissioner of public safety; powers and duties

If a town so votes under section twenty-one the selectmen shall appoint a suitable person as chief of the police and fire departments who may be designated as commissioner of public safety. He shall have authority, subject to the approval of the selectmen, to appoint a deputy as chief of the police and one or more deputy chiefs of the fire department. He shall have all the authority of constables and police officers in towns and also the powers and duties of fire engineers, and, subject to the approval of the selectmen, shall fix the compensation of police officers and permanent and call members of the fire department. Such compensation shall not exceed, however, in the aggregate the amount appropriated therefor by the town. The deputy chiefs of the fire department shall under him have the powers of fire engineers relative to the extinguishing of fires in the town and the protection of life and property in case of fire.

Historical and Statutory Notes

St.1920, c. 591, § 41.

§ 101A. Police officers or firefighters; tobacco smoking

Subsequent to January first, nineteen hundred and eighty-eight, no person who smokes any tobacco product shall be eligible for appointment as a police officer or firefighter in a city or town and no person so appointed after said date shall continue in such office or position if such person thereafter smokes any tobacco products. The personnel administrator shall promulgate regulations for the implementation of this section.

Added by St.1987, c. 697, § 117.

§ 102. Inspector of health

If a town votes under section twenty-one to have its selectmen act as a board of health, the selectmen may appoint an inspector of health, who shall assist the selectmen in the performance of their duties as such board.

Historical and Statutory Notes

St.1920, c. 591, § 38.

§ 102A. Appointment in towns under three thousand population

In any town of not exceeding three thousand inhabitants which votes under section twenty-one to have its selectmen act as a board of health and which accepts this section by vote in town meeting, the selectmen may appoint the school physician to be inspector of health, with the duties set forth in section one hundred and two. Such appointment shall not bar the school physician from the general practice of his profession.

Historical and Statutory Notes

St.1925, c. 303, § 3.

§ 102B. Appointment in towns of 5,000 or more inhabitants

In any town of five thousand inhabitants or more which accepts this section, the board of health shall appoint a full-time inspector of health who shall devote his time to the enforcement of the laws and regulations related to public health and such other duties as may be assigned by said board. This section shall not apply to any town which has formed a district pursuant to section twenty-seven A of chapter one hundred eleven.

Added by St.1973, c. 281.

§ 103. Purchasing department; purchasing agent; duties and salaries

A city which accepts this section in the manner provided in the following section or has accepted corresponding provisions of earlier laws, or a town which accepts this section or has accepted corresponding provisions of earlier laws, may establish a purchasing department, to consist of a purchasing agent and such assistants as the city council or selectmen may determine. In cities the salaries of the purchasing agent and assistants shall be determined by the city council. In cities the agent and assistants shall be appointed by the mayor for such terms of office as may be prescribed by ordinance, and in towns they shall be appointed and may be removed by the selectmen. The purchasing agent shall purchase all supplies for the city or town and for every department thereof except in case of emergency. All purchases or contracts for purchases exceeding one thousand dollars in amount shall be based upon competition. A record shall be kept by the department of the prices paid for the supplies, and shall be open to the inspection of any citizen.

Amended by St.1967, c. 79, § 2; St.1986, c. 18; St.1989, c. 341, § 25.

Historical and Statutory Notes

St.1916, c. 223, § 1.
St.1920, c. 591, § 30.

§ 104. Establishment of purchasing department; submission to electorate

A city council, with the approval of the mayor, may vote to submit the preceding section to the qualified voters of the city at any annual city election, in the form of the following question to be placed upon the ballot:

"Shall section one hundred and three of chapter forty-one of the General Laws, authorizing the establishment of purchasing departments in cities, be accepted?"	YES.	
	NO.	

If a majority of the voters voting thereon shall vote in the affirmative, said section shall take effect in that city.

Historical and Statutory Notes

St.1916, c. 223, § 2.

§ 105. Board of trustees for soldiers' memorials; powers and duties; membership; tenure; vacancies; rules and regulations

Towns which accept gifts or bequests or appropriate money for the purpose of properly commemorating the services and sacrifices of the soldiers, sailors, marines and airmen who have served the country in war or persons who have rendered military service for the commonwealth in time of war may provide for a board of trustees to have charge and control of the construction of any such memorial, and to have the custody and care thereof after its construction. In cities the board shall consist of the mayor and five members appointed by him and approved by the council, three of whom shall be veterans and two of whom shall not be veterans of any war; two members shall be appointed for one year, two for two years, and one for three years, and as the term of each member expires, a successor shall be appointed for three years. Any vacancy shall be filled in the same manner for the unexpired term. In towns the said board shall consist of the chairman of the board of selectmen, and five members elected by the town in the same manner as other town officers, three of whom shall be veterans and two of whom shall not be veterans of any war; two members shall be elected for one year, two for two years and one for three years, and as the term of each member expires, a successor shall be elected for three years; but until such board is elected, the selectmen may appoint a temporary board to serve until the next annual town meeting. Whenever a member who shall be a veteran is to be elected, the office shall be identified on the ballot and on nomination papers as "trustee of soldiers' memorials — veteran" and only candidates who are veterans shall be nominated. Whenever a member who shall not be

a veteran is to be elected, the office shall be identified on the ballot and on nomination papers as "trustee of soldiers' memorials — non–veteran" and only candidates who are not veterans of any war shall be nominated. Any vacancy occurring in the town board shall be filled for the unexpired term by the remaining members. Such board may make such rules and regulations relative to the use of said memorials as they deem necessary. "War" as used in this section shall include, but not be limited to, the following military actions: Korean, Vietnam, Lebanon, and Grenada.

Amended by St.1936, c. 132, § 2; St.1954, c. 627, § 17; St.1985, c. 175, § 1; St.1986, c. 695, § 1; St.1989, c. 124; St.1990, c. 526, § 7.

Historical and Statutory Notes

St.1919, c. 61, § 3.
St.1920, c. 292, § 3.

§ 106. Tree warden; appointment; term

If the town provides by vote or by-law that the tree warden shall be appointed, such appointment shall be made by the board of selectmen. The term of such appointment shall be for three years.

In any city or in a town which exceeds ten thousand inhabitants and which provides by vote, by-law or by ordinance that the tree warden shall be appointed, such appointment shall be made by the mayor, with the approval of the city council or by the board of selectmen. In such city or town, the tree warden shall exercise the duties of tree warden and of insect pest control. Such tree warden shall be qualified by training and experience in the field of arborculture and licensed with the department of food and agriculture in accordance with the provisions of section ten of chapter one hundred and thirty-two B. The term of such appointment shall be for three years.

Amended by St.1977, c. 690, § 3; St.1996, c. 395.

Historical and Statutory Notes

St.1920, c. 591, § 42.

§ 106A. Town physician; appointment in certain towns

In any town of not exceeding three thousand inhabitants which accepts this section by vote in town meeting, the selectmen may appoint the school physician to be the town physician. Such appointment shall not bar the school physician from the general practice of his profession.

Historical and Statutory Notes

St.1925, c. 303, § 4.

§ 106B. Capital planning committee; establishment; duties

A town at its annual town meeting may by by-law establish a capital planning committee. Said by-law shall prescribe the composition, mode of appointment or election and terms of the members of said capital planning committee. Said committee shall annually review the capital improvement program, if any, and proposals for the construction of municipal buildings, acquisition of land or personal property and make recommendations to the appropriate officer, board, agency or department. Such recommendations may be included within the annual budget or the annual report required by section sixty-one if authorized by a by-law of the town. Other duties and responsibilities of said capital planning committee may be specified by by-law. Any vacancy occurring shall be filled for the unexpired term in the same manner as the original appointment.

Added by St.1986, c. 119.

§ 107. Oath of office; beginning of term

A person who is elected town clerk shall be sworn either by the moderator or by a justice of the peace, and shall enter upon the performance of his duties on the seventh day succeeding his election or as soon thereafter as he is qualified and shall hold office during the term fixed by law, which shall begin on the seventh day succeeding his election, and until another person is qualified in his stead. Every person elected as a moderator of a town or district or to any other town office designated by name in section one, or as an officer of a district, which district includes two or more towns, before entering upon his official duties shall be sworn to the faithful performance thereof either by the town clerk in the case of a moderator, and in all other cases by the moderator, or by the town clerk in the town in which he resides, and, unless other provision is specifically made by law, shall enter upon the performance of his duties on the day after his election, or as soon thereafter as he is qualified, and shall hold office during the term fixed by law, which shall begin on the day after said election, and until another person is qualified in his stead. Every other elected member and every appointed member of every board or commission of a town, and every other elected officer and every appointed officer of a town, shall also,

before entering upon his official duties, be sworn to the faithful performance thereof.

Amended by St.1953, c. 44; St.1955, c. 123; St.1964, c. 63.

Historical and Statutory Notes

St.1785, c. 75, § 2.
R.S.1836, c. 15, § 33.
G.S.1860, c. 18, § 31.
P.S.1882, c. 27, §§ 78, 79.
St.1893, c. 417, §§ 277, 278.
St.1898, c. 548, §§ 342, 343.
R.L.1902, c. 11, §§ 346, 347.
St.1907, c. 560, §§ 374, 375, 456.
St.1913, c. 835, §§ 414, 415, 503.
St.1918, c. 291, § 27.
St.1927, c. 18.
St.1929, c. 130.

§ 108. Compensation

The salary and compensation of all elected officers of a town shall be fixed annually by vote of the town at an annual town meeting, but said salary or compensation may be revised by a two-thirds vote of any special town meeting called to conduct business later in the same fiscal year for which said salary or compensation was originally fixed; provided, however, that such salary revision occurs prior to the establishment of the tax rate of the town in said fiscal year. Except as provided in section four A and section one hundred and eight A, and except in any city in which salaries and wages are fixed by special law or by ordinance in accordance with the provisions of any general or special law, all boards or heads of departments of a town shall, as soon as may be after the passage of the annual budget, fix the salary or compensation of all officers or employees appointed or employed by them, subject to the provisions of section thirty-one of chapter forty-four. The provisions of this section shall be operative notwithstanding the provisions of sections thirteen and thirty-four of said chapter forty-four. A city may by ordinance prescribe that all fees, charges or commissions allowed by law to any officer thereof shall be paid into the city treasury and belong to the city, and in such case shall pay such officer such compensation as the city council may determine.

Amended by St.1947, c. 540, § 1; St.1969, c. 849, § 44; St.1971, c. 766, § 10; St.1982, c. 226.

Historical and Statutory Notes

St.1888, c. 308, § 1.
St.1893, c. 423, § 37.
R.L.1902, c. 25, § 95; c. 26, § 17.
St.1920, c. 591, § 8.
St.1931, c. 426, § 157.

§ 108A. Classification of positions; compensation plans; rules and regulations

A city by ordinance and a town by by-law may establish, and from time to time amend, a plan classifying any or all positions, other than those filled by popular election and those under the direction and control of the school committee, into groups and classes doing substantially similar work or having substantially equal responsibilities. Such city or town may in like manner or in a city by vote of the city council, subject to the provisions of its charter, and in a town by vote of the town at a town meeting, establish, and from time to time amend, a plan establishing minimum and maximum salaries to be paid to employees in positions so classified, and such salary plan may provide for the attainment of such maximum salaries by periodical step-rate increases based on length of service. Nothing in this section shall be construed to conflict with the provisions of chapter thirty-one. Any by-law adopted under the provisions of this section shall not be subject to section thirty-two of chapter forty.

In any city or town for which a classification plan has been established in accordance with the provisions of paragraph (b) of section five of said chapter thirty-one, the city or town affected thereby shall, within one year after receiving notice from the administrator of the effective date of such classification plan or of said amendment or change, establish, amend or change, as the case may be, a compensation plan with a minimum and maximum salary for each group of positions. No rule or regulation or change in rules or regulations shall be promulgated as a part of any such compensation plan except after a public hearing held not less than two weeks nor more than two months after notice thereof shall have been posted in a conspicuous place in the city or town hall and in at least five other convenient and conspicuous places and shall also have been published on one or more days in one or more newspapers having a circulation in the city or town. Every notice posted shall contain, or have subjoined or annexed thereto, a copy of the proposed rule or regulation. If such rule or regulation or change therein is to be adopted by vote of the town or by by-law, the publication of the proposed rule, regulation or change in the warrant for the town meeting shall be deemed to satisfy the requirements of this paragraph.

Added by St.1947, c. 540, § 2. Amended by St.1948, c. 351; St.1960, c. 87; St.1969, c. 12, § 2; St.1969, c. 849, § 45; St.1971, c. 766, § 10; St.1978, c. 393, § 20.

§ 108B. Assessors and tax collectors in districts; compensation and expenses

In a town in which a district has been created and is operating under a law which requires the assessors of the town to assess district taxes and the collector of taxes of the town to collect such taxes, such district shall annually appropriate money for the salary or compensation of the assessors and collector of taxes, which shall be in addition to the amounts fixed by the town for salary or compensation as provided by section one hundred and eight and shall also include additional compensation for certified collectors as provided in section 108P. The amounts appropriated for said purposes shall not be less than the amounts determined by the prudential committee of the district, or, if there be no prudential committee, by the commissioners of the district and the selectmen of the town. If the said prudential committee or commissioners, as the case may be, and the selectmen cannot agree on the amounts and the commissioner of revenue is so notified, the said commissioner may determine the amounts and shall notify the assessors who shall include the amounts determined by said commissioner in the aggregate amount assessed annually for district taxes, and the amounts assessed shall be paid said assessors and collectors. Said districts may also appropriate money for books, forms and other necessary expenses of said assessors and collectors of taxes in connection with the assessment and collection of such taxes.

Added by St.1949, c. 235. Amended by St.1967, c. 45, § 5; St.1978, c. 514, § 27; St.1999, c. 170, §2.

§ 108C. By-laws pertaining to administration of personnel; consolidation

A town may consolidate, in a single chapter or article, all provisions of its by-laws pertaining to the administration of its personnel, including, among other things, the compensation plan established pursuant to paragraph (b) of section five of chapter thirty-one, the plans established pursuant to section one hundred and eight A of this chapter, and any by-laws adopted pursuant to section twenty-one A of chapter forty, and may provide by by-law for the establishment of a personnel board or other agency for the purpose of administering said plans or other provisions of its by-laws pertaining to personnel, determining any questions arising thereunder, and advising the town in any matters pertaining thereto; provided, however, such consolidated by-law shall not be subject to the approval of the attorney general as provided in section thirty-two of chapter forty.

Added by St.1954, c. 295, § 2. Amended by St.1978, c. 393, § 21.

§ 108D. Fire fighters; minimum annual compensation

Notwithstanding the provisions of section thirty-three A of chapter forty-four and any other general or special law to the contrary, the minimum annual compensation of each permanent fire fighter in the fire department of any city or town, except one who by virtue of section sixty-one of chapter thirty-one is not regarded as a tenured employee, shall be not less than fifty-five hundred dollars. This section shall become effective when accepted in a city having a plan E charter by the affirmative vote of a majority of all the members of the city council, and, in the case of other cities by vote of the city council, subject to the provisions of the charter, and in a town by a majority vote at a town meeting.

Added by St.1958, c. 621. Amended by St.1960, c. 260; St.1978, c. 393, § 22.

§ 108E. Policemen; schedule of minimum annual compensation

Notwithstanding the provisions of any general or special law to the contrary, the minimum annual compensation of each regular police officer of the police department of any city or town shall be not less than the following:

For the first year of service four thousand eight hundred and eighty dollars.

For the second year of service five thousand and thirty dollars.

For the third and each succeeding year of service five thousand five hundred dollars.

This section shall become effective when accepted in a city having a plan E charter by the affirmative vote of a majority of all the members of the city council, and, in the case of other cities by vote of the city council, subject to the provisions of the charter, and in a town by majority vote at an annual town meeting.

Added by St.1959, c. 228.

§ 108F. Fire fighters; schedule of minimum annual compensation

Notwithstanding the provisions of any general or special law to the contrary, the minimum annual compensation of each fire fighter, permanently em-

ployed, in the fire department of any city or town which accepts the provisions of this section, except a fire fighter who, by virtue of section sixty-one of chapter thirty-one is not regarded as a tenured employee, shall be not less than the following:

For the first year of service five thousand five hundred dollars.

For the second year of service six thousand dollars.

For the third and each succeeding year of service six thousand three hundred dollars.

Added by St.1962, c. 520. Amended by St.1978, c. 393, § 23.

§ 108G. Policemen; alternate schedule of minimum annual compensation

Notwithstanding the provisions of any general or special law to the contrary, the minimum annual compensation of each regular police officer of the police department of any city or town which accepts the provisions of this section shall be not less than the following:

For the first year of service fifty-five hundred dollars.

For the second year of service six thousand dollars.

For the third and each succeeding year of service sixty-three hundred dollars.

Added by St.1963, c. 19.

§ 108H. Fire fighters assigned to photographic work; additional compensation

In any city or town which accepts the provisions of this section, a member of the fire department assigned to photographic work in said department shall, after completing one year's service in such assignment, receive in addition to his annual salary as a fire fighter a salary increase of six hundred dollars a year, to be paid so long as he is assigned to said photographic work.

Added by St.1966, c. 33.

§ 108I. Policemen assigned to photographic or fingerprint identification work; additional compensation

In any city or town which accepts the provisions of this section, a member of the police department assigned to photographic or fingerprint identification work in said department shall, after completion of one year's service in such assignment, receive in addition to his annual salary as a police officer a salary increase of six hundred dollars a year, to be paid him so long as he is assigned to said photographic or fingerprint identification work.

Added by St.1966, c. 33.

§ 108J. Equal pay of male and female employees

In any city or town which accepts this section, male and female employees in classified civil service employed in the same grades who, in the opinion of the personnel administrator, are doing the same type of work with the same preparation and training shall receive equal pay.

Added by St.1966, c. 129. Amended by St.1974, c. 835, § 140.

§ 108K. Female police officers; equality of compensation

A female regular police officer in a city or town shall receive compensation equal, in all respects, to the compensation received by a male regular police officer of equal rank and seniority.

Added by St.1966, c. 499.

§ 108L. Police career incentive pay program; salary increases; reimbursement of cities or towns

There is hereby established a career incentive pay program offering base salary increases to regular full-time members of the various city and town police departments, uniformed members of the department of state police appointed under said section ten, state police detectives appointed under section ten of said chapter twenty-two C, as a reward for furthering their education in the field of policework.

Police career incentive base salary increases shall be predicated on the accumulation of points earned in the following manner: one point for each semester hour credit earned toward a baccalaureate or an associate degree; sixty points for an associate degree; one hundred and twenty points for a baccalaureate degree; and one hundred and fifty points for a degree of master or for a degree in law; provided, that said credits or degrees were earned in courses leading towards a degree in law enforcement or any course or degree program approved by the board of higher education prior to July 1st, 1976. All semester credits and degrees shall be earned in an educational institution ac-

credited by the New England Association of Colleges and Secondary Schools or by the board of higher education, and shall be credited for the purpose of determining points under this section, notwithstanding the date of appointment of an individual to a position described in the first paragraph of this section.

The board of higher education is hereby authorized and directed to establish and maintain a list of approved courses leading to a degree in law enforcement.

Base salary increases authorized by this section shall be granted in the following manner: a three per cent increase for ten points so accumulated, a six per cent increase for twenty-five points, a ten per cent increase for forty points, a fifteen per cent increase for sixty points, a twenty per cent increase for one hundred and twenty points, and a thirty per cent increase for one hundred and fifty points so accumulated.

Any city or town which accepts the provisions of this section and provides career incentive salary increases for police officers shall be reimbursed by the commonwealth for one half the cost of such payments upon certification by the board of higher education. The board of higher education shall certify the amount of such reimbursement to be paid to such city or town from information filed on or before September first of each year with said board, on a form furnished by it, the chief of police, or one of similar rank, of the city or town police department. The board of higher education shall also certify the amount of the career incentive salary increases to be allocated to the members of the department of state police appointed under section ten of chapter twenty-two C from information filed with said board on or before September first of each year by the colonel of state police. Said information shall be filed on a form to be furnished by the board of higher education.

Notwithstanding the provisions of this section, no such regular full-time police officer shall be entitled to such pay increase for points earned after September 1st, 1976; provided, however, that such police officer who is certified as of September 1st, 1976 in the police career incentive program leading to a degree in law enforcement shall only be granted further base salary increases of fifteen per cent for an associate's degree in law enforcement, or sixty points earned toward a baccalaureate degree in law enforcement, a twenty per cent increase for a baccalaureate degree in law enforcement, a thirty per cent increase for a master's degree in law enforcement or for a degree in law; or any police officer enrolled in any course or degree program approved by the board of higher education, prior to July 1st, 1976, shall only be granted further base salary increases of fifteen per cent for an associate's degree or sixty points earned toward a baccalaureate degree, a twenty per cent increase for a baccalaureate degree, and a thirty per cent increase for a master's degree or for a degree in law, provided further, that such percentage increase shall in total, including any previously earned increase, not exceed fifteen per cent for an associate's degree or sixty points earned toward a baccalaureate degree, twenty per cent for a baccalaureate degree, and thirty per cent for a master's degree or for a degree in law, provided further, that any regular full-time police officer commencing such incentive pay program after September 1st, 1976 shall be granted a base salary increase of ten per cent upon attaining an associate's degree in law enforcement or sixty points earned to a baccalaureate degree in law enforcement, a twenty per cent increase upon attaining a baccalaureate degree in law enforcement, and a twenty-five per cent increase upon attaining a master's degree in law enforcement or for a degree in law.

Notwithstanding any other provision of this section to the contrary, the board of higher education shall establish quality guidelines, including, but not limited to, standards and review processes, for programs pursued for police career incentive pay increases under this section. Any such degree shall have been earned through a program approved by the board of higher education as meeting or exceeding academic standards established by the above-mentioned guidelines. Under no circumstances, shall said board certify any program which grants credits for the following: life experience; courses taught by instructors lacking appropriate educational degrees as determined by said board; and courses lacking appropriate concentration on academic and scholarly research. For the purposes of fulfilling the duties and obligations set forth in this section, the board of higher education shall have the authority to conduct periodic reviews of criminal justice or law degree programs offered by independent regionally accredited colleges and universities. The board of higher education shall only certify career incentive pay increases earned through the completion of programs that meet the board's guidelines, but police officers enrolled, prior to the implementation of

the quality guidelines, in degree granting programs in order to receive career incentive base salary adjustments shall, upon attainment of said degree, be eligible for certification by the board of higher education to receive career incentive base salary increases pursuant to the provisions of this section in effect prior to the quality guidelines established pursuant to this paragraph. Police officers receiving career incentive base salary adjustments prior to the implementation of the quality guidelines shall continue to receive such base salary adjustments, as certified by said board, pursuant to the provisions of this section in effect prior to the quality guidelines established pursuant to this paragraph.

Only graduates of: (1) criminal justice or law enforcement programs that meet or exceed the guidelines for criminal justice and law enforcement programs, as set forth by the board of higher education and implemented on January 1, 2004; or (2) law schools that are New England Association of School and Colleges accredited or board approved and who have passed the Massachusetts bar examination, shall be eligible for the police career incentive pay program.

The president of a New England Association of Schools and Colleges accredited institution or board of higher education approved institution shall submit a letter of intent to seek approval of its criminal justice degree program to the chancellor of higher education by May 1 of the year in which the institution intends to submit an application. The letter of intent shall include a statement of commitment to implement Standard D, Admission and Articulation, for all students enrolling in a criminal justice or law enforcement program after May 1 of the calendar year in which the letter is submitted. All programs shall meet the guidelines for criminal justice and law enforcement programs as approved by the board of higher education.

An application for approval as a police career incentive pay program participating institution shall be developed by the board of higher education and shall include the following: (1) a profile of the program; (2) demonstration of the program's fulfillment of the standards as stated in the guidelines; and (3) an application fee to cover the evaluation costs of the review process. Applications shall be submitted according to the timetable established by the board of higher education.

Each institution shall pay an evaluation fee to the board of higher education's police career incentive pay program quality assurance trust fund to cover the costs of review of its program. In addition to the fee, the institution shall pay for travel, room, board and other normal expenses of the external evaluation committee. If the committee requires subsequent visits, the board of higher education shall charge for further expenses at its discretion. Evaluation fees shall be determined by the total number of degrees awarded to all students enrolled in the criminal justice and law enforcement program being reviewed based on an average of the 3 years immediately prior to the submission of the application.

Fees shall be determined by the total number of degrees awarded to all students in the criminal justice and law enforcement program being reviewed in the following manner: $1,000 for institutions awarding fewer than 20 criminal justice or law enforcement degrees per year; $1,500 for institutions awarding between 20 and 50 criminal justice or law enforcement degrees per year; $2,000 for institutions awarding between 51 and 100 criminal justice or law enforcement degrees per year; $2,500 for institutions awarding between 101 and 150 criminal justice or law enforcement degrees per year; $3,000 for institutions awarding between 151 and 200 criminal justice or law enforcement degrees per year; and $3,500 for institutions awarding over 200 criminal justice or law enforcement degrees per year.

Once an application is submitted, the following timetable shall apply: (1) within 30 business days, board staff shall determine whether or not the application is complete and notify the institution; (2) within 30 business days of notification to the institution that the application is complete, an external evaluation committee shall be appointed in accordance with the guidelines; (3) within 30 business days of completing the evaluation of a program's application, the external evaluation committee shall submit a report to board staff; (4) within 30 business days of receipt of the report, board staff shall send the committee's report to the institution with a response required; (5) the institution may request an extension, if needed, to respond adequately to the committee's report; (6) within 30 business days of receiving the institution's response, the staff of the board shall evaluate materials submitted by the institution, the committee's written report, the written response from the institution, and any additional information submitted by the institution, including a request for a delay; (7) based on its review, board staff shall

make a recommendation to the board for deferral, approval, or disapproval, and the board shall take action by formal vote; and (8) if the board's determination is to disapprove the institution's request, the board shall provide a statement of reasons for the decision.

Programs approved by the board of higher education shall be included on an approved program list for 5 years. The institutions shall annually submit a status report on its approved programs to the board. Programs receiving deferrals from the board shall receive specific conditions that must be met and a timetable for coming into compliance. Programs not approved by the board may not reapply for at least 1 calendar year following the board's determination.

When, in the judgment of the board staff, a review or inspection of a degree program is necessary, the board, in consultation with the applicant institution, shall select and appoint an external evaluation committee to serve in the following manner: (1) the committee shall review the materials submitted by the program, visit the institution, and submit a report to the board containing recommendations regarding the programs request for approval; (2) the number of reviewers on the committee shall be determined by size, number and level of the program being reviewed and shall, under no circumstances have fewer than 2 academicians; (3) to be eligible to serve as an evaluator, individuals shall have earned at least a master's degree in criminal justice or a closely related discipline and academic team members shall have professional experience in college-level teaching, research, administration or other relevant activities with institutions of higher education, and practitioners shall have at least 5 years of full-time supervisory or administrative experience as a criminal justice practitioner, as well as specific knowledge of or experience in criminal justice education; (4) no person shall serve as an evaluator who is employed by an institution considered by the board to be in direct competition with the institution under review; (5) no person shall serve as an evaluator who has a present or recent official or unofficial connection with the institution under review, or who the board has reason to believe has independent or pecuniary interest in the outcome of the board's final action; provided, however, that external evaluators shall have a disinterested professional commitment to the task of rendering objective finding and recommendations based upon empirical evidence and informed judgments; (6) each committee shall have a chairperson who shall be responsible for providing leadership to the committee, for being the committee's liaison with the institution and for preparing with other committee members, the committee's report; (7) the committee shall submit a written report, including recommendations to the board, and board staff shall forward a copy of the report to the institution to correct factual errors and respond to the content and recommendations within the report; (8) evaluators shall be given an honorarium by the board of higher education and all expenses shall be paid by the institution under review; and (9) evaluators shall be provided an orientation before conducting reviews.

Annually, each approved institution shall submit 2 copies of a report to the board reviewing the status of the institution's criminal justice and law enforcement program. This report shall certify that the criminal justice program is being maintained and operated within the provisions and guidelines set forth by the board of higher education guidelines for criminal justice and law enforcement programs. If at any time, in the judgment of the board staff, there is a reasonable probability of non-compliance with the board's guidelines by a particular institution, the board may review the institution to determine if continued approval of the institution is proper.

An institution that is in objection of an adverse decision may appeal the board's determination. The appeal shall be heard by a review panel appointed by the board of higher education and the findings and recommendations of the panel shall be received by the board whose decision shall be final.

Added by St.1970, c. 835. Amended by St.1973, c. 369, §§ 1, 2; St.1975, c. 452, §§ 1 to 3; St.1976, c. 283, § 38; St.1976, c. 480, § 9; St.1991, c. 138, §§ 124, 125; St.1991, c. 412, §§ 51, 52; St.2002, c. 184, § 48; St.2004, c. 149, § 93, eff. July 1, 2004.

§ 108M. Police officers attending law enforcement courses at accredited college or university for degree; payment of salary; duty hours; agreement

A city or town which employs a permanent police officer who is enrolled as a student in good standing in a police, law enforcement, criminal justice or police career oriented course of study at a college or university accredited by the New England Association of Colleges and Secondary Schools, Inc., or the board of higher education,

shall, subject to the approval of the appointing authority, and chief of police or any other officer having similar duties, pay said police officer his full weekly salary during the normal thirty-two weeks such college or university is in session; provided, that he is enrolled for at least sixteen hours of classroom instruction, works twenty-four hours a week on regular duty as a police officer in said city or town and during regularly scheduled school vacations works his regular tour of duty; and provided, further, that he is studying for a baccalaureate, master's or higher degree. Each officer who is enrolled in a college or university under the provisions of this section shall enter into an agreement providing that he shall remain in full-time employment as a police officer in such city or town after completion of such course of study for as many years as he has been aided under this section.
Added by St.1971, c. 115.

§ 108N. Town manager, administrator, executive secretary, or administrative assistant; employment contract

Notwithstanding the provision of any general or special law to the contrary, any city or town acting through its board of selectmen or city council or mayor with the approval of the city council, as the case may be, may establish an employment contract for a period of time to provide for the salary, fringe benefits, and other conditions of employment, including but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performances of duties or office, liability insurance, and leave for its town manager, town administrator, executive secretary, administrative assistant to the board of selectmen, town accountants, city auditor or city manager, or the person performing such duties having a different title.

Said contract shall be in accordance with and subject to the provisions of the city or town charter and shall prevail over any conflicting provision of any local personnel by-law, ordinance, rule, or regulation. In addition to the benefits provided municipal employees under chapters thirty-two and thirty-two B, said contract may provide for supplemental retirement and insurance benefits.

Nothing contained in this section shall affect the appointment or removal powers of any city or town over its town manager, town administrator, executive secretary, administrative assistant to the board of selectmen, town accountants, city auditor or city manager, or such person performing such duties with a different title, nor shall it grant tenure to such officer, nor shall it abridge the provisions of section sixty-seven of chapter forty-four.
Added by St.1982, c. 279. Amended by St.1996, c. 182.

§ 108O. Employment contracts for police chiefs and fire chiefs

Any city or town acting through its appointing authority, may establish an employment contract for the salary, fringe benefits, and other conditions of employment, including but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performance of his duties or office, liability insurance, conditions of discipline, termination, dismissal, and reappointment, performance standards and leave for its police chief and fire chief, or a person performing such duties having a different title. In communities where said police chief and fire chief is subject to the provisions of chapter thirty-one, the provisions of chapter thirty-one shall prevail when the provisions of this section conflict with the provisions of said chapter thirty-one.

Said contract shall prevail over any conflicting provision of any local personnel by-law, ordinance, rule or regulation. In addition to the benefits provided municipal employees under chapters thirty-two and thirty-two B, said contract may provide for supplemental retirement and insurance benefits.

Nothing contained in this section shall affect the appointment powers of any city or town over its police chief and fire chief, or such person performing such duties with a different title. In the absence of any conflicting provisions in an employment contract, nothing contained in this section shall affect the removal powers of any city or town over its police chief and fire chief or such person performing such duties with a different title.

Nothing contained in this section shall grant tenure to such officer, nor shall it abridge the provisions of section sixty-seven of chapter forty-four. If there is no employment contract in force, and if the police chief or fire chief has an appointment for a term, the appointing authority shall give such chief at least one year's written notice if it decides not to reappoint said chief.
Added by St.1995, c. 289, § 1. Amended by St.2000, c. 423, §§ 1, 2.

§ 108P. Additional compensation for collectors or treasurers

In any city, town or district that accepts this section, a collector or a treasurer who has completed the necessary courses of study and training and has been awarded a certificate by the Massachusetts Collectors and Treasurers Association as a certified Massachusetts municipal collector or a certified Massachusetts municipal treasurer or a certified Massachusetts district treasurer, shall receive as compensation from such city, town or district, in addition to the regular annual compensation paid by such city, town or district for services in such office, an amount equal to 10 per cent of such regular annual compensation, but not more than $1,000 per year. A collector or treasurer who has been awarded both certificates referred to above shall receive such additional compensation for only one such certificate. In order to qualify for such additional compensation, a collector or treasurer shall submit to the mayor or the board of selectmen of such city or town, or the governing board of a district proof of the award of either or both such certificates. The additional compensation provided in this section shall be prorated for any 12 month period in which an eligible person does not hold the office of collector or treasurer for 12 consecutive months. Such additional compensation shall be discontinued when certification is discontinued or withdrawn.

Added by St.1999, c. 170, § 3.

§ 109. Resignation; notice; residence requirements

No resignation of a town or district officer shall be deemed effective unless and until such resignation is filed with the town or district clerk or such later time certain as may be specified in such resignation. Upon receipt of a resignation the clerk shall notify the remaining members, if the resignation is received from a board of two or more members, and he shall further notify the executive officers of the town or district and such notification shall include the effective date of the resignation. Unless otherwise provided by general or special law, ordinance or by-law, a person need not, in order to accept appointment to a public office in a town or district, be a resident of such town or district; provided, however, that if an appointed town or district officer is required to become a resident within a period of time specified at the time of his appointment by the board or officer making the appointment but fails to do so within the time specified, or if an elected or appointed town or district officer removes from the town or district in which he holds his office, he shall be deemed to have vacated his office.

Amended by St.1960, c. 592, § 2; St.1964, c. 54; St.1970, c. 381; St.1971, c. 151, § 2.

Historical and Statutory Notes

P.S.1882, c. 27, § 89.
St.1893, c. 417, § 291.
St.1898, c. 548, § 358.
R.L.1902, c. 11, § 362.
St.1907, c. 560, §§ 390, 456.
St.1913, c. 835, §§ 430, 503.
St.1918, c. 291, § 32.

§ 109A. Fidelity bonds; payment of premiums

Every officer or employee of a city, town or district required to furnish a fidelity bond with a surety or sureties shall furnish a bond with a surety company authorized to transact business in the commonwealth, as surety. The premium on such bond shall in every case be paid by the city, town or district.

Historical and Statutory Notes

St.1924, c. 404, § 9.

§ 110. Authorization for holidays

The city council of a city may provide that the employees, including laborers, mechanics and all other classes of workmen employed by the city, shall be allowed one half holiday in each week without loss of pay during such portion of the year as the city council determines. The selectmen of a town, upon the recommendation in writing of the head of any town department, may provide that the employees of such department in the town, including laborers, mechanics and all other classes of workmen employed by the town, shall be allowed one half holiday in each week without loss of pay during such part of the year as the selectmen determine. This section shall not apply to any city or town which has accepted the provisions of section thirty-three A of chapter one hundred and forty-nine.

Amended by St.1950, c. 242.

Historical and Statutory Notes

St.1898, c. 367, §§ 1, 3.
R.L.1902, c. 25, § 99; c. 26, § 22.
St.1920, c. 591, § 12.

§ 110A. Office hours on Saturday

Any public office in any city or town may remain closed on any or all Saturdays as may be determined from time to time, in a city by the city

council, subject to the provisions of the city charter, or, in a town, by vote of the town at a special or regular town meeting, and the provisions of section nine of chapter four shall apply in the case of such closing of any such office on any Saturday to the same extent as if such Saturday were a legal holiday.

Added by St.1947, c. 265.

§ 111. Vacations of certain employees

In any city or town which has accepted chapter two hundred and seventeen of the acts of nineteen hundred and fourteen or has accepted this section in any form, or which accepts this section in the manner hereinafter provided, or has accepted earlier provisions of this section, every permanent civil service employee as well as every person classified as a common laborer, skilled laborer, mechanic or craftsman, shall be granted a vacation of not less than two weeks without loss of pay in each calendar year if he has actually worked for such city or town for thirty weeks in the aggregate during the twelve months preceding the first day of June in such year. Such vacation shall be granted by the head of the respective department of the city or town at such time as in his opinion will cause the least interference with the performance of the regular work of the city or town. Any official of a city or town whose duty it is to grant a vacation as provided by this section who wilfully refuses to grant the same shall be punished by a fine of not more than one hundred dollars. The attorney general shall enforce this section and shall have all necessary powers therefor.

If a petition requesting that the question of acceptance of this section be submitted to the registered voters of any city or town not already subject to this section, signed by registered voters thereof equal in number to at least one per cent of the whole number of registered voters thereof, is filed with the city or town clerk not less than sixty days before a biennial state election, said city or town clerk shall immediately transmit said petition to the state secretary, who shall cause to be placed upon the official ballot to be used in said city or town at said state election the following question: "Shall section one hundred and eleven of chapter forty-one of the General Laws, providing for vacations for certain municipal employees, be accepted?" If a majority of the registered voters of such city or town voting thereon vote in the affirmative in answer to said question, said section shall be applicable in such city or town from and after the beginning of the next municipal year.

Amended by St.1932, c. 109; St.1936, c. 242; St.1937, c. 15; St.1941, c. 368; St.1943, c. 280; St.1946, c. 301; St.1948, c. 330, § 1; St.1949, c. 475, § 1; St.1951, c. 242, § 1; St.1998, c. 161, § 280.

Historical and Statutory Notes

St.1914, c. 217.
St.1915, c. 60.
St.1917, c. 16.
St.1919, c. 350, § 65.
St.1920, c. 143.
St.1921, c. 486, § 10.
St.1923, c. 346.
St.1927, c. 131.

§ 111A. Vacations for police and firemen

In any city or town which accepts this section or has accepted corresponding provisions of earlier law, on January first in each year every member of its regular or permanent police or fire force who has been such for at least six months shall become entitled to a vacation of not less than two weeks during such year, without loss of pay; provided that a member, who has not been such for a period of at least six months on said January first, shall be entitled to such a vacation upon the anniversary date of his appointment. Such vacation shall be granted at such time or times as in the opinion of the board or officer in charge of such force will cause the least interference with the performance of the regular work of such force. Section one hundred and eleven shall not apply to the members of the regular or permanent police or fire force in any such city or town.

Amended by St.1934, c. 107; St.1949, c. 172; St.1956, c. 46; St.1960, c. 154; St.1967, c. 335.

Historical and Statutory Notes

St.1929, c. 206.

§ 111B. Sick leaves; accumulation

Any foreman, laborer, workman or mechanic regularly employed by any city or town which accepts this section shall, when entitled thereto, be granted sick leaves aggregating not more than fifteen days in any year, exclusive of Sundays and holidays, without loss of pay; provided, that sick leave allowances not used in any particular year may be accumulated, for such number of years as may be determined by the city council of any such city or selectmen of any such town, for use in any subsequent year. The attorney general shall en-

force this section, and shall have all necessary powers therefor.
Added by St.1945, c. 156. Amended by St.1946, c. 187; St.1949, c. 686; St.1998, c. 161, § 281.

§ 111C. Attendance by employee veterans at funerals or memorial services for veterans

Any employee of a city or town who is a veteran, as defined in section one of chapter thirty-one, may, when authorized by the mayor or selectmen, attend, without loss of pay, the funeral or memorial services of a veteran, as so defined, or of any person dying under other than dishonorable circumstances while serving in the army, navy, coast guard, marine corps or air force of the United States in time of war or insurrection.
Added by St.1945, c. 348. Amended by St.1953, c. 179; St.1974, c. 267; St.1978, c. 393, § 24.

§ 111D. Vacations for police and firemen

In any city or town which accepts this section, all members of its regular police or fire force may be granted a vacation without loss of pay. Such vacations shall be computed in the following manner:—

For five years' service, but less than ten years' service, a vacation of three weeks.

For ten years' service or more, a vacation of four weeks.

Section one hundred and eleven shall not apply to the members of the regular or permanent police or fire force in any such city or town.
Added by St.1949, c. 384.

§ 111E. Vacation pay for terminated employees; conditions

Whenever the employment of any person subject to section one hundred and eleven or sections one hundred and eleven A, one hundred and eleven D or one hundred and eleven G is terminated during a year by dismissal through no fault or delinquency on his part or by resignation, retirement or death, without his having been granted the vacation to which he is entitled under such section, he, or in case of his death, his estate, shall be paid, at the regular rate of compensation payable to him at the termination of his employment, an amount in lieu of such vacation; provided, that no monetary or other allowance has already been made therefor. The official head of the department in which the person was last employed shall enter on the departmental payroll all amounts payable under this section. The provisions of this section shall also apply to any person not subject to any of the aforesaid sections whose service is terminated as aforesaid without his having been granted the vacation to which he is entitled under a by-law, ordinance or executive order; provided, that such by-law, ordinance or executive order so provides.
Added by St.1949, c. 475, § 2. Amended by St.1953, c. 436, § 2; St.1954, c. 13; St.1956, c. 45.

§ 111F. Leave with pay for incapacitated employees

Whenever a police officer or fire fighter of a city, town, or fire or water district is incapacitated for duty because of injury sustained in the performance of his duty without fault of his own, or a police officer or fire fighter assigned to special duty by his superior officer, whether or not he is paid for such special duty by the city or town, is so incapacitated because of injuries so sustained, he shall be granted leave without loss of pay for the period of such incapacity; provided, that no such leave shall be granted for any period after such police officer or fire fighter has been retired or pensioned in accordance with law or for any period after a physician designated by the board or officer authorized to appoint police officers or fire fighters in such city, town or district determines that such incapacity no longer exists. All amounts payable under this section shall be paid at the same times and in the same manner as, and for all purposes shall be deemed to be, the regular compensation of such police officer or fire fighter. This section shall also apply to any member of a fire department who is subject to the provisions of chapter one hundred and fifty-two if he is injured at a fire and if he waives the provisions of said chapter. This section shall also apply to any permanent crash crewman, crash boatman, fire controlman or assistant fire controlman employed at the General Edward Lawrence Logan International Airport and members of the Massachusetts military reservation fire department and, for the purposes of this section, the Massachusetts Port Authority and the Massachusetts military reservation shall be fire districts.

Where the injury causing the incapacity of a firefighter or police officer for which he is granted a leave without loss of pay and is paid compensation in accordance with the provisions of this section, was caused under circumstances creating a legal liability in some person to pay damages in respect thereof, either the person so injured or the

city, town or fire or water district paying such compensation may proceed to enforce the liability of such person in any court of competent jurisdiction. The sum recovered shall be for the benefit of the city, town or fire or water district paying such compensation, unless the sum is greater than the compensation paid to the person so injured, in which event the excess shall be retained by or paid to the person so injured. For the purposes of this section, "excess" shall mean the amount by which the total sum received in payment for the injury, exclusive of interest and costs, exceeds the amount paid under this section as compensation to the person so injured. The party bringing the action shall be entitled to any costs recovered by him. Any interest received in such action shall be apportioned between the city, town or fire or water district and the person so injured in proportion to the amounts received by them respectively, inclusive of interest and costs. The expense of any attorney's fees shall be divided between the city, town or fire or water district and the person so injured in proportion to the amounts received by them respectively.

Whoever intentionally or negligently injures a firefighter or police officer for which he is granted a leave without loss of pay and is paid compensation in accordance with the provisions of this section shall be liable in tort to the city, town or fire or water district paying such compensation for all costs incurred by such city, town or fire or water district in replacing such injured police officer or firefighter which are in excess of the amount of compensation so paid.

Added by St.1952, c. 419. Amended by St.1958, c. 266; St.1961, c. 218; St.1964, c. 149; St.1977, c. 646, § 2; St.1990, c. 313; St.2008, c. 308, § 9, eff. Sept. 1, 2008.

§ 111G. Additional vacation time for longevity

In any city or town in which the provisions of section one hundred and eleven apply and which accepts this section, in the manner hereinafter provided, any employee thereof who has worked continuously for five years but less than ten years shall be granted an annual vacation of three weeks without loss of pay, and any employee thereof who has worked continuously for ten years or more shall be granted an annual vacation of four weeks without loss of pay. Except as otherwise provided in this section, the provisions of said section one hundred and eleven shall continue to apply in such city or town. This section shall become effective in a city having a Plan E charter by the affirmative vote of a majority of all the members of the city council, and, in the case of other cities by vote of the city council, subject to the provisions of the charter, and in a town by a majority vote at an annual town meeting.

Added by St.1952, c. 488.

§ 111G½. Vacations; duration

In any city or town in which the provisions of section one hundred and eleven apply and which accepts this section, any employee thereof who has worked for five years but less than ten years, in the aggregate, shall be granted an annual vacation of three weeks without loss of pay, and any employee thereof who has worked for ten years, in the aggregate, or more shall be granted an annual vacation of four weeks without loss of pay.

Added by St.1965, c. 735.

§ 111H. Overtime pay for police officers; conditions

Notwithstanding the provisions of any general or special law to the contrary, any police officer of a city or town who is required to perform any service beyond his regular established hours of service on primary day, on election day, on the thirty-first day of October or at any parade or race or at any public celebration or while police listing, shall be compensated for such additional hours of service at the rate per hour of his regular compensation. This section shall take effect in a city having a Plan E charter when accepted by the affirmative vote of a majority of the city council, and in the case of other cities by vote of the council, subject to the provisions of its charter, and in a town by a majority vote at an annual town meeting. The rate per hour of his regular compensation referred to in this section shall be based on the number of hours worked in an average week.

Added by St.1953, c. 293. Amended by St.1954, c. 573, § 1.

§ 111*I*. Compensation due deceased employees; disposition

Whenever any officer or employee or former officer or employee of a city or town dies, and such city or town owes his estate any sum or sums by reason of services rendered by him or by reason of section one hundred and eleven E or section one hundred and eleven F or section seventeen E of chapter one hundred and forty-seven or other similar general or special law or by reason of other

terms of his employment, and neither a duly appointed executor or administrator nor a voluntary administrator has made written demand for payment upon the treasurer of such city or town and such treasurer shall not otherwise have actual notice that proceedings relative to the formal or informal settlement of such estate have been commenced in any probate court, such sum or sums may, in the discretion of such treasurer, be paid after the expiration of one month from the death of such officer or employee to such person as may have been nominated as beneficiary, on a form approved by the director of accounts and filed with such treasurer, by such officer or employee during his lifetime or, if there is no such beneficiary, then to the husband, widow or next of kin of such officer or employee. Payments made as provided in this section shall discharge all liability of the city or town to all persons with respect to such sum or sums.

Added by St.1953, c. 436, § 3. Amended by St.1954, c. 562, § 3; St.1962, c. 321, § 2; St.1967, c. 663.

§ 111J. Attendance at veterans' conventions

Any employee of a city or town who is a delegate or alternate to a state or national convention of a veterans' organization chartered by the congress of the United States may, when authorized by the board or officer having the power to remove him, attend such convention without loss of pay or vacation leave.

Added by St.1963, c. 412.

§ 111K. Firemen; summer vacations

In any city or town which accepts this section, any vacation to which a member of its regular or permanent fire force is entitled shall be granted at such times during the period between the first Sunday in June and the Sunday next following Labor Day as, in the opinion of the board or officer in charge of such force, will cause the least interference with the performance of the regular work of such force; provided, however, that such vacations may be granted at such other periods of the year as shall be mutually agreeable to the member and the board or officer in charge of such force.

Added by St.1966, c. 162.

§ 111L. Policemen and firemen; vacations; 20 years' service

In any city or town in which the provisions of section one hundred and eleven D apply and which accepts this section all members of its regular police or fire force may after twenty years of service be granted a vacation of five weeks without loss of pay.

Added by St.1968, c. 33.

§ 111M. Emergency medical technicians; leave without loss of pay while incapacitated

In any city or town which accepts this section, an employee of a city or town or fire or water district who is responsible for delivering emergency medical services under the provisions of chapter one hundred and eleven C, and who is incapacitated for duty because of injury sustained in the performance of his duty without fault of his own shall be granted leave without loss of pay for the period of such incapacity; provided, that no such leave shall be granted for any period after such emergency medical personnel has been retired or pensioned in accordance with law or for any period after a physician designated by the board or personnel authorized to appoint emergency medical personnel in such city, town or district determines that such incapacity no longer exists. All amounts payable under this section shall be paid at the time and in the same manner as, and for all purposes shall be deemed to be, the regular compensation of such emergency medical personnel. This section shall also apply to any such employee who is subject to the provisions of chapter one hundred and fifty-two if he is injured while delivering emergency medical services and if he waives the provisions of said chapter.

Where the injury causing the incapacity of an emergency medical personnel for which he is granted a leave without loss of pay and is paid compensation in accordance with the provisions of this section, was caused under circumstances creating legal liability in some person to pay damages in respect thereof, either the person so injured or the city, town or fire or water district paying such compensation may proceed to enforce the liability of such person in any court of competent jurisdiction. The sum recovered shall be for the benefit of the city, town or fire or water district paying such compensation, unless the sum is greater than the compensation paid to that person so injured. For the purposes of this section, "excess" shall mean the amount by which the total sum received in payment for the injury, exclusive of interest and costs, exceeds the amount paid under this section as compensation to the person so injured. The

party bringing the action shall be entitled to any costs recovered by him. Any interest received in such action shall be apportioned between the city, town, or fire or water district and the person so injured in proportion to the amounts received by them respectively, inclusive of interest and costs. The expense of any attorney's fees shall be divided between the city, town, or fire or water district and the person so injured in proportion to the amounts received by them respectively.

Whoever intentionally or negligently injures an emergency medical personnel for which he is granted a leave without loss of pay and is paid compensation in accordance with the provisions of this section shall be liable in tort to the city, town or fire or water district paying such compensation for all costs incurred by such city, town, or fire or water district in replacing such injured emergency medical personnel which are in excess of the amount of compensation paid.

Added by St.1982, c. 203.

§ 111N. Indemnification of emergency medical technicians for certain expenses

Any city operating under a Plan D or Plan E charter which accepts this section by the affirmative vote of two-thirds of all the members of its city council, and any other city which accepts this section by a majority vote of its city council with the approval of the mayor, and any town which accepts this section by a majority vote of its inhabitants at an annual town meeting or a special town meeting upon application by a public employee of such city or town who is responsible for delivering emergency medical care pursuant to the provisions of section six of chapter one hundred and eleven C, hereinafter referred to as an emergency medical technician or, in the event of the physical or mental incapacity or death of such emergency medical technician by someone in his behalf, the board or officer of such city or town authorized to appoint the emergency medical technicians, shall determine whether it is appropriate under all the circumstances for such city or town to indemnify such emergency medical technician for his reasonable hospital, medical, surgical, chiropractic, nursing, pharmaceutical, prosthetic and related expenses and reasonable charges for chiropody incurred as the natural and proximate result of an accident occurring or, of undergoing a hazard peculiar to his employment, while acting in the performance and within the scope of his duty without fault of his own. For the purposes of this section, "duty" shall include any assigned special detail whether or not the emergency medical technician was paid by the city or town. If such board or officer determines that such indemnification is appropriate, such board or officer shall certify for payment, either directly or by reimbursement, by such city or town, the amount of such expenses as may be specified in such certificate. Whenever such board or officer denies an application in whole or in part, such board or officer shall set forth in writing the reasons for such denial and cause a copy thereof to be delivered to the applicant. At any time within two years after the filing of an application as aforesaid, an applicant aggrieved by a denial in whole or in part of his application or by the failure of such board or officer to act thereon within six months from the filing thereof, may petition the superior court to determine whether such board or officer has failed to timely act on such an application or, in denying the application, in whole or in part, has committed an error of law has been arbitrary or capricious or has abused his discretion, or otherwise has acted not in accordance with law. After due notice and hearing, such court may order such board or officer to act on such application or to consider, or to further consider, and determine the same in conformity with law.

A city or town shall indemnify an emergency medical technician, in the manner and to the extent herein provided and subject to the same limitations for expenses or damages incurred by him in the defense of the settlement of a claim against him for acts done by him while operating a motor vehicle as such emergency medical technician.

Where the injury for which any payment is made pursuant to the provisions of this section by a city or town has been caused under circumstances creating a legal liability in some person to pay damages in respect thereof, either the emergency medical technician so injured or the city or town may proceed to enforce the liability of such person in any court of competent jurisdiction. The party bringing a successful action shall be entitled to any costs, interest and attorneys' fees incurred as a direct result of such action.

Whoever intentionally or negligently injures an emergency medical technician for which he is paid indemnification under this section shall be liable in tort to the city or town for the amount of indemnification so paid.

Added by St.1989, c. 312.

§ 112. Preference in public employment

In towns and regional school districts in which the provisions of chapter thirty-one and the rules governing the civil service have not been applied to the labor service, the city councils, the selectmen and the regional district school committees shall take any necessary action to secure the employment of veterans, as defined in clause Forty-third of section seven of chapter four, in the labor service of their respective cities, towns and districts in preference to all other persons.

In regional school districts in which the provisions of said chapter thirty-one and the rules governing the civil service have not been applied to custodian and janitorial services, the regional district school committees shall take any necessary action to secure the employment of veterans, as so defined, in preference to all other persons.

The second paragraph of this section shall take effect in a regional school district upon its acceptance by vote of the regional district school committee.

Amended by St.1954, c. 627, § 18; St.1961, c. 330.

Historical and Statutory Notes

St.1896, c. 517, § 6.
R.L.1902, c. 19, § 24.
St.1919, c. 150, § 3.

§ 112A. Veterans in unclassified positions; procedure for involuntary separation

A veteran, as defined in section one of chapter thirty-one, who holds in the service of a city which accepts this section by vote of its city council, subject to the provisions of its charter, or of a town which accepts the same by vote of its inhabitants at a town meeting, an office or position not classified under said chapter thirty-one, other than an elective office, an appointive office for a fixed term or the offices of city solicitor, assistant city solicitor, secretary to the mayor, clerk of the board of selectmen, town counsel, assistant town counsel, legislative counsel, registrars of voters or other officers performing similar duties, or public school teachers, and has held such office or position for not less than five years, shall not be involuntarily separated from such office or position except subject to and in accordance with the provisions of sections forty-one to forty-five, inclusive, of said chapter thirty-one to the same extent as if said office or position were classified under said chapter. If the separation in the case of any such unclassified office or position results from lack of work or lack of money, such a veteran shall not be separated from his office or position while similar offices or positions in the same group or grade exist unless all such offices or positions are held by such veterans, in which case such separation shall occur in the inverse order of their respective original appointments.

Added by St.1947, c. 276. Amended by St.1978, c. 393, § 25.

§ 113. Use of official ballots

A district situated in one or more towns where official ballots are used may, at the annual meeting or at a meeting called for the purpose, vote that official ballots shall thereafter be used therein. Sections one hundred and fourteen to one hundred and nineteen, inclusive, shall apply to all such districts and to all districts which are now subject to the corresponding provisions of earlier laws; but any of said districts may, at the annual meeting or at a meeting called for the purpose at least thirty days before the annual meeting, by a two thirds vote discontinue the use of official ballots, and cease to be subject to said sections.

Amended by St.1967, c. 45, § 6.

Historical and Statutory Notes

St.1915, c. 182, §§ 1, 7.

§ 114. Application of election laws

Where official ballots are used nominations for district officers elected by ballot shall be made, ballots and other apparatus therefor provided, and the elections of such officers conducted in accordance with chapters fifty to fifty-six, inclusive, so far as applicable, except as otherwise provided in sections one hundred and fourteen to one hundred and seventeen, inclusive, of this chapter.

Historical and Statutory Notes

St.1915, c. 182, § 1.

§ 115. Nomination papers; filing; certificates of nomination

Every nomination paper of a candidate for office in said districts shall, before being filed, be submitted, on or before five o'clock in the afternoon of the Saturday preceding the day on which it must be filed, to the registrars of voters of the town where the district is situated, who shall forthwith certify thereon the number of signatures which are names of voters qualified to vote in the district. All nomination papers and certificates of nomination shall be filed with the clerk of the district within the time

allowed by the general laws relating to filing nomination papers and certificates of nomination with the town clerk in town elections. In a district composed of parts of two or more towns the prudential committee, if any, otherwise the commissioners, of the district shall act as registrars of voters for the purpose of certifying the signatures on nomination papers.

Amended by St.1967, c. 45, § 7.

Historical and Statutory Notes

St.1915, c. 182, § 2.

§ 116. Duties of prudential committee and clerk in certain districts

In carrying out the provisions of sections one hundred and thirteen to one hundred and nineteen, inclusive, the prudential committee, if any, otherwise the commissioners, of the district shall perform all the duties required to be performed by the selectmen in town elections where official ballots are used, and the clerks of said districts shall perform all the duties required to be performed by the town clerk in elections of town officers where official ballots are used.

Amended by St.1967, c. 45, § 8.

Historical and Statutory Notes

St.1915, c. 182, § 3.

§ 117. District elections; provision for election equipment; liability for expenses

The town where a district is situated shall provide for said district an official ballot box and other necessary election paraphernalia when they are required for use in elections in that district, but all expense incurred in any election in the district shall be borne by the district. In districts composed of parts of two or more towns the ballot box and election paraphernalia shall be furnished by the town where the election is actually held.

Historical and Statutory Notes

St.1915, c. 182, § 4.

§ 118. District elections; provision for forms, tally and vote sheets

Upon request of the clerk of a town wherein any such district uses the official ballot, the state secretary shall supply for use of such district or districts such blank forms, tally sheets and total vote sheets as are supplied to towns for use in town elections.

Historical and Statutory Notes

St.1915, c. 182, § 5.

§ 119. District meetings; qualifications

Said districts may hold the meeting for the election of officers and the business meeting on the same day, or they may hold the election and the business meeting on different days. The election and business meeting may be held in the evening; provided, that the polls shall be kept open for the election of officers at least two hours. Annual district meetings shall be held in February, March, April or May. Meetings may be adjourned from time to time for the consideration of any articles in the warrant, except an article calling for the election of district officers.

Every district meeting, except as otherwise provided by special law, shall be called in pursuance of a warrant under the hands of the prudential committee, if any, otherwise the commissioners, notice of which shall be given seven days at least before such meeting. The warrant shall be directed to a constable of the town, or to some other person, who shall forthwith give notice of such meeting in the manner prescribed by the by-laws, or, if there are no by-laws, by vote of the district, or by posting in two or more public places or advertising in a newspaper published in the town in which the district is located, if any, otherwise in a newspaper published in the county. The warrant for all district meetings shall state the time and place of holding the meeting and the subjects to be acted upon thereat. The prudential committee, if any, otherwise the commissioners, shall insert in the warrant for the annual meeting all subjects the insertion of which shall be requested of them in writing by ten or more registered voters of the town residing in the territory comprising the district and in the warrant of every special district meeting all subjects the insertion of which shall be requested of them in writing by fifty registered voters or by ten per cent of the total number of the registered voters of the town residing within the territory comprising the district. The prudential committee, if any, otherwise the commissioners, shall call a special district meeting upon request in writing of one hundred registered voters or twenty per cent of the total number of registered voters of the town residing within the territory comprising the district, such meetings to be held not later than thirty days after the receipt of such request, and shall insert in the warrant therefor all subjects the insertion of which shall be requested by said petition. No action shall be valid unless the subject matter thereof is contained in the warrant. Two or more distinct district meetings for distinct purposes

may be called by the same warrant. At every meeting a moderator shall be chosen by ballot, unless the district has voted to elect a moderator for a term as provided by section fourteen of chapter thirty-nine. The moderator shall have the powers of the moderator of the town meeting.

Amended by St.1950, c. 137; St.1950, c. 779; St.1967, c. 45, §§ 9, 10; St.1974, c. 88, § 2.

Historical and Statutory Notes

St.1915, c. 182, § 6.

§ 120. Fiscal year of districts

The fiscal year of all districts shall begin with July first and end with the following June thirtieth, notwithstanding the provisions of special laws or district by-laws to the contrary; provided that the district treasurer shall until July tenth enter on his books all items for the payment of bills incurred and salaries and wages earned during the previous fiscal year, and expenditures therefor shall be deemed to be as of the preceding June thirtieth.

Added by St.1949, c. 133, § 1. Amended by St.1967, c. 45, § 11; St.1969, c. 849, § 46.

§ 121. District treasurers; qualifications

The provisions of section thirty-five of chapter forty-one and of section fifty-five A of chapter forty-four, so far as apt, shall apply to the treasurer of districts.

Added by St.1950, c. 211. Amended by St.1967, c. 45, § 12.

§ 122. Temporary treasurer; appointment; bond

Unless otherwise provided by law, if the office of treasurer of a district is vacant, or if the treasurer is absent, or unable to perform his duties because of disability, the prudential committee, if any, otherwise the commissioners, may appoint a temporary treasurer to hold such office and exercise the powers and perform the duties thereof until another is duly elected or appointed and qualifies according to law or until the treasurer who was disabled or absent resumes his duties. Any such temporary treasurer shall be sworn to and give bond for the faithful performance of his duties in accordance with the provisions of law applicable to the treasurer whose position he fills, and if he fails so to do within ten days after his appointment, the prudential committee, if any, otherwise the commissioners, shall rescind the appointment and appoint another.

Added by St.1963, c. 106. Amended by St.1967, c. 45, § 13; St.1969, c. 563, § 1.

§ 123. Temporary clerk; appointment; bond

Unless otherwise provided by law, if the office of clerk of a district is vacant, or if the clerk is absent, or unable to perform his duties because of disability, the prudential committee, if any, otherwise the commissioners, may appoint a temporary clerk to hold such office and exercise the powers and perform the duties thereof until another is duly elected or appointed and qualifies according to law or until the clerk who was disabled or absent resumes his duties. Any such temporary clerk shall be sworn to and give bond for the faithful performance of his duties in accordance with the provisions of law applicable to the office of clerk which he fills, and if he fails so to do within ten days after his appointment, the prudential committee, if any, otherwise the commissioners, shall rescind the appointment and appoint another.

Added by St.1964, c. 3. Amended by St.1967, c. 45, § 14.

§ 123A. Assistant treasurers and assistant clerks; appointment; bond

In a district, the prudential committee, if any, otherwise the commissioners, may in writing appoint an assistant treasurer who may be an employee of the district, and an assistant clerk of the district. Such assistants shall be sworn to the faithful performance of their duties and a record shall be made of any such appointment and oath. They shall be citizens of the United States and residents of the commonwealth, and shall give bond annually for the faithful performance of their duties in a form approved, and in an amount determined by the commissioner of revenue. Unless a temporary treasurer or a temporary clerk has been appointed in accordance with law, the assistant treasurer or the assistant clerk, as the case may be, may, in the absence of the treasurer or clerk, as the case may be, perform the duties of such office and in the performance of such duties shall have the powers and be subject to the requirements and penalties applicable thereto.

Added by St.1969, c. 563, § 2. Amended by St.1978, c. 514, § 28.

§ 124. Fire and water districts; appropriation for cost of water favorability studies

Fire and water districts, whether established by general law or special law, may appropriate money

for the payment to the commonwealth of the district's share of the cost of conducting water favorability studies under the direction of the water resources commission, as authorized by section nine of chapter twenty-one.
Added by St.1964, c. 643, § 4.

§ 125. Temporary housing assistance plans

The city manager in cities having a plan D or E charter, the mayor in all other cities, and the board of selectmen in towns shall co-ordinate a plan in conjunction with the housing authority, if any, to assist persons who have been deprived of living quarters because of fire or other disaster to obtain temporary living quarters.
Added by St.1972, c. 556.

§ 126. Definitions

The following words, as used in sections one hundred and twenty-six to one hundred and thirty-two, inclusive, shall have the following meanings, unless a different meaning is plainly required by the context:

"Application statement", a writing signed by an incumbent in an appointive office which shall include a request for tenure in said office, the name, residential address and title of the office of such incumbent, and the number of years such incumbent has held such office continuously. The writing may also be signed by a department head requesting tenure for members of his department who have held offices for five or more consecutive years.

"Appointive office", any public office other than an office which is required to be filled by popular vote periodically in a city, town or district, but not including an office within the classified civil service, an office on a board, commission or committee which has two or more members, a teacher or officer in a school department or system, any office which is filled by appointment made by the governor, or any office in an authority, board, commission or other public body which is a separate corporation from the city, town or district in which it exercises powers.

"District", a fire, water, sewer, light, improvement or other district with such powers which is wholly contained within a city or town.

"Tenure", the holding of an appointive office under the provisions of sections one hundred and twenty-seven to one hundred and thirty-two, inclusive, in a city, town or district without the necessity of periodic reappointment.

The titles of particular municipal officers as used in these said sections shall be construed to mean officers, however titled, who exercise powers similar to those exercised by officers holding titles so used.
Added by St.1973, c. 170.

§ 127. Eligibility to apply for tenure; offices excepted; restrictions; duration of tenure; removal for cause

Any person who has held an appointive office in a city, town or district for at least five consecutive years shall be eligible to apply for tenure in such office pursuant to the provisions of sections one hundred and twenty-six to one hundred and thirty-two, inclusive, with the exception of the following offices:—city or town manager, executive secretary to the selectmen, city or assistant city solicitor, town or assistant town counsel, and legislative counsel. Any person having tenure in a city or town office who is elected to or accepts an appointment to any of the foregoing offices, whether or not to fill a vacancy, shall thereupon lose such tenure. Any person having tenure in an appointive city or town office may not apply for tenure in any other city or town office, nor may any person apply for tenure in more than one city or town office at any one time, except that a person may apply for tenure as city clerk and city treasurer or town clerk and town treasurer, or, if such person has tenure in either of such offices, he may apply for tenure in the other office; provided that both such offices are appointive offices. If any person is unable to so apply for tenure by reason of holding one of the offices specified above or loses his tenure by reason of being elected or appointed to any such office, he may, following the termination of his service in such office, then apply for tenure in an appointive city or town office. Any person granted tenure of office under these provisions shall, notwithstanding any contrary provision of general or special laws, hold office during good behavior until he has attained age sixty-five unless incapacitated by physical or mental disability from performing the duties thereof, but may be removed for cause after a hearing as provided by sections forty-one to forty-five, inclusive, of chapter thirty-one.
Added by St.1973, c. 170. Amended by St.1978, c. 393, § 26.

§ 128. City offices; application statement; filing; approval procedure; denial, reapplication time limit

Any person applying for tenure in an appointive city office shall file an application statement with the city clerk and shall deliver copies thereof in hand or send same by registered or certified mail, return receipt requested, to every city officer, or every member of any city board, commission or other body that is required to recommend, make, approve or confirm the applicant's office. Upon receipt of the application statement, the city clerk shall post a copy thereof in his office. The applicant shall forthwith and at his own expense cause a copy of his said statement to be published in a newspaper of general circulation in the city once a week for three consecutive weeks. Not less than thirty days after said posting and not less than seven days following the applicant's compliance with the publication requirement, the city council shall vote to approve or deny said application. If the city council approves said application, it shall then be presented to the mayor for his approval or denial. If the mayor approves the said application, at least one hundred and twenty days prior to the next municipal election, the city clerk shall cause to be printed on the ballot for such municipal election a question in substantially the following form:

Shall (name of applicant), incumbent in the position or positions of (title of office), be granted tenure pursuant to sections one hundred and twenty-six to one hundred and thirty-two, inclusive, of chapter forty-one of the General Laws?	YES.	
	NO.	

If a majority of the votes cast in response to the question is in favor of granting tenure, the applicant shall thereupon have tenure in such office. If less than a majority of such votes cast is in favor of granting tenure, the applicant's request for tenure is denied. If the application statement is denied either by the vote of the city council, by the mayor or by vote of the electorate at a municipal election, the applicant shall be ineligible to apply for tenure in his said office for a period of two years following such denial.

Added by St.1973, c. 170.

§ 129. Town offices; application statement; filing; approval procedure; denial, reapplication time limit

Any person applying for tenure in an appointive town office shall file an application statement with the town clerk and shall deliver copies thereof in hand or send same by registered or certified mail, return receipt requested to each selectman. Following receipt of such notice, the selectmen shall vote to approve or deny said application. If the board of selectmen vote to approve said application, the town clerk, at least one hundred and twenty days prior to the next town election, shall post a copy of the said application statement and the selectmen's written approval on the town bulletin board or such other place used for the posting of public notices within the town hall premises. The selectmen shall then cause to be included in the town warrant for said election a question in substantially the following form:

Shall (name of applicant), incumbent in the position or positions of (title of office), be granted tenure pursuant to sections one hundred and twenty-six to one hundred and thirty-two, inclusive, of chapter forty-one of the General Laws?	YES.	
	NO.	

If a majority of the votes cast in response to the question is in favor of granting tenure, the applicant shall thereupon have tenure in such office. If less than a majority of such votes cast is in favor of granting tenure, the applicant's request for tenure is denied. If the application statement is denied either by a vote of the board of selectmen or by vote of the electorate at the town election, the applicant shall be ineligible to apply for tenure in his said office for a period of two years following such denial.

Added by St.1973, c. 170.

§ 130. Applicability of town tenure provisions to districts

The provisions of section one hundred and twenty-seven and sections one hundred and twenty-nine to one hundred and thirty-two, inclusive, as they apply to towns, town offices and town officers shall be applicable to districts and for this purpose the word "selectmen" shall be construed to mean "commissioner" or "member of the prudential committee", and other references to specific town

offices or officers shall be construed as meaning the equivalent office or officer, if any, in a district. For the purpose of determining whether a person is eligible to apply for tenure in a town office or in a district office and for the purpose of determining whether a person has lost his tenure in such an office, offices in a district shall be deemed to be offices in the town in which they are located.

Added by St.1973, c. 170.

§ 131. City or town offices; application statement by head of department for tenure of its members; filing; approval procedure; denial, re-application time limit

Any department head of a city or town applying for tenure for members of his department who have served for five consecutive years or more shall file an application statement with the city or town clerk.

In a city, the department head shall deliver copies of said application statement in hand or send same by registered or certified mail, return receipt requested, to the mayor and to each member of the city council. Upon receipt of the application statement, the city clerk shall post a copy thereof in his office. The department head shall forthwith and at his own expense cause a copy of his said statement to be published in a newspaper of general circulation in the city once a week for three consecutive weeks. Not less than thirty days after said posting and not less than seven days following the applicant's compliance with the publication requirement, the city council shall vote to approve or deny said application. If the city council approves said application, it shall then be presented to the mayor for his approval or denial. If the mayor approves the said application, at least one hundred and twenty days prior to the next municipal election, the city clerk shall cause to be printed on the ballot for such municipal election a question in substantially the following form:

Shall members of (name of department) who have served continuously for five years or more be granted tenure pursuant to sections one hundred and twenty-six to one hundred and thirty-two, inclusive, of chapter forty-one of the General Laws?	YES.	
	NO.	

If a majority of the votes cast in response to the question is in favor of granting tenure, any member of such department who has served continuously for five years shall thereupon have tenure in said department. If less than a majority of such votes cast is in favor of granting tenure, the applicant's request for tenure for members of his department is denied. If the application statement is denied either by vote of the city council, by the mayor or by vote of the electorate at a municipal election, the applicant shall be ineligible to apply for tenure for members of his department for a period of two years following such denial.

In a town, the department head shall deliver copies of said application statement in hand or send same by registered or certified mail, return receipt requested, to each selectman. Following receipt of such notice, the selectmen shall vote to approve or deny said application. If the board of selectmen vote to approve said application, the town clerk, at least one hundred and twenty days prior to the next town election, shall post a copy of the said application statement and the selectmen's written approval on the town bulletin board or such other place used for the posting of public notices within the town hall premises. The selectmen shall then cause to be included in the town warrant for said election a question in substantially the following form:

Shall members of (name of department) who have served continuously for five years or more be granted tenure pursuant to sections one hundred and twenty-six to one hundred and thirty-two, inclusive, of chapter forty-one of the General Laws?	YES.	
	NO.	

If a majority of the votes cast in response to the question is in favor of granting tenure, any member of such department who has served continuously for five years shall thereupon have tenure in said department. If less than a majority of such votes cast is in favor of granting tenure, the applicant's request for tenure is denied. If the application statement is denied either by vote of the board of selectmen or by vote of the electorate at a town election, the applicant shall be ineligible to apply for tenure for members of his department for a period of two years following such denial.

Added by St.1973, c. 170.

§ 132. Tenure limitations

The tenure provisions of sections one hundred and twenty-six to one hundred and thirty-one, inclusive, shall be limited as follows:

(a) Said provisions shall not apply to persons whose tenure in office is terminated by a law enacted subsequent to his commencement of tenure.

(b) Said provisions shall not prevent abolition of any municipal office or the transfer of any of the powers and duties of any office.

(c) Said provisions shall not prevent termination of tenure upon an appointive office becoming elective. Any person's length of service in an elective office which becomes appointive, however, may be credited to his eligibility period for tenure if he succeeds himself in such office.

(d) Said provisions shall not extend the time at which an officer is otherwise required to retire.

(e) Said provisions shall not waive residency requirements in determining tenure eligibility.

Added by St.1973, c. 170.

§ 133. Appointment and reappointment of police officers

Pursuant to this chapter, and notwithstanding the provisions of any general or special law to the contrary, the appointment and reappointment of full-time police officers not subject to the provisions of chapter thirty-one shall be subject to the following provisions:

(a) The initial appointment shall be for a period of one year during which a person shall actually perform the duties of such position on a full-time basis. The initial appointment shall be a probationary period during which police officers shall be deemed employees at will whose removal or dismissal shall be without recourse at any time during such initial appointment.

(b) Appointment subsequent to the initial appointment shall be made annually or for a term of years not exceeding three years, as the appointing authority shall determine, and such appointing authority may remove any such officer for cause, and after a hearing, at any time during such appointment. For police officers covered by collective bargaining agreements which contain standards for the discharge, termination or removal of employees, the nonreappointment of a police officer serving under an appointment subsequent to an initial appointment shall be considered to be a discharge, termination or removal and the standards shall be enforceable with respect to such nonreappointment by the procedures set forth in the collective bargaining agreement.

Added by St.1995, c. 283.

CHAPTER 43B

HOME RULE PROCEDURES

Chapter 43B of the General Laws was added by St.1966, Ex.Sess., c. 734, § 1.

Selected sections

Section

8. Charter commission; rules and regulations; personnel; funds; receipts and expenditures; office space and facilities; taxation and borrowing.

Section

20. Provisions of charter or amendment deemed consistent with certain other laws.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 8. Charter commission; rules and regulations; personnel; funds; receipts and expenditures; office space and facilities; taxation and borrowing

(a) A charter commission may adopt rules governing the conduct of its meetings and proceedings and may employ such legal, research, clerical or other employees, who shall not be subject to the provisions of chapter thirty-one, or consultants as its account may permit. In addition to funds made available by a city or town the charter commission account may receive funds from any other source, public or private, provided, however, that no contribution of more than five dollars shall be accepted from any source other than the city or town unless the name and address of the person or agency making the contribution, the amount of the contribution and the conditions or stipulations as to its receipt or use, if any, are disclosed in a writing filed with the city or town clerk. The consent of a charter commission to any such condition or stipulation shall not be binding upon a city or town. Within thirty days after submission of its final report the charter commission shall file with the city or town clerk a complete account of all its receipts and expenditures for public inspection. Any balance remaining in its account shall be credited to the city's or town's surplus revenue account.

(b) Each city or town shall provide its charter commission, free of charge, with suitable office space and with reasonable access to other facilities for holding public hearings, may contribute clerical and other assistance to such commission, and shall permit it to consult with and obtain advice and information from city or town officers and employees during ordinary working hours. Within twenty days after the election of a charter commission, the city or town treasurer shall credit to the account of the charter commission, with or without appropriation, the sum of two thousand dollars in a town of less than twelve thousand inhabitants, the sum of five thousand dollars in a city or town of twelve thousand or more but less than fifty thousand inhabitants, the sum of seven thousand five hundred dollars in a city or town of fifty thousand or more but less than one hundred thousand inhabitants and the sum of ten thousand dollars in any other city or town. Such sum shall be provided by taxation in the manner set forth in section twenty-three of chapter fifty-nine if payment is made prior to the fixing of the annual tax rate, and otherwise shall be provided by transfer by the treasurer from available funds or by borrowing in the manner and for the period provided in the case of final judgments under clause (11) of section seven of chapter forty-four, and subject to all other applicable provisions of said chapter forty-four except that such borrowing may be authorized by the city treasurer and city manager, if any, otherwise the mayor of the city and by the town treasurer and board of selectmen of a town. A city or town may appropriate such additional funds for its charter commission as is deemed necessary.

Added by St.1966, Ex.Sess., c. 734, § 1. Amended by St.1984, c. 363, § 6.

§ 20. Provisions of charter or amendment deemed consistent with certain other laws

The provisions of any charter or charter amendment adopted pursuant to the provisions of this chapter shall be deemed consistent with the provisions of any law relating to the structure of city and town government, the creation of local offices, the term of office or mode of selection of local offices, and the distribution of powers, duties and responsibilities among local offices. Such provisions may provide:

(a) that any particular local office shall be either elected or appointed; provided, however, that in

any town having a board of selectmen the members of such board shall always be elected; provided, further, that in any city or town having a school committee the members of such committee shall always be elected; and provided, further, that in any town having a form of town meeting open to all of its registered voters the town moderator shall always be elected and in every other case all of the members of the legislative body shall always be elected;

(b) that any particular local officer or employee shall be appointed by any particular local officer;

(c) for the number of persons to serve as members of any multiple member body; provided, however, that all such multiple member bodies shall always consist of an odd number of members;

(d) for the term of office to be served by any local elected officer; provided, however, that no term of office of a local elected officer shall be for more than five years, and the members of multiple member bodies shall serve for terms which, as nearly as possible, expire in different years;

(e) for the merger or consolidation of two or more local offices into a single office;

(f) that the powers, duties and responsibilities of one local office be divided and exercised by two or more local offices;

(g) for the confirmation of any appointment by another municipal agency.

Added by St.1984, c. 363, § 7.

CHAPTER 43C

OPTIONAL FORMS OF MUNICIPAL ADMINISTRATION ACT

Chapter 43C of the General Laws was added by St.1987, c. 756.

Section

1. Short title.
2. Definitions.
3. Adoption authorized; conditions; revocation or rescission.
4. Adoption; initiation by petition.
5. Petition; form.
6. Petition; submission to voters.
7. Council or board proposal; submission to voters.
8. Vote on two or more plans.
9. Revocation or rescission of plan; home rule alternative.
10. Effect of adoption; employee transfer; consolidation of agencies.
11. Consolidated department of municipal finance; petition summary; ordinance or by-law.
12. Consolidated department of community development; petition summary; ordinance or by-law.
13. Consolidated department of municipal inspections; petition summary; ordinance or by-law.
14. Adoption, revocation or rescission of plan; majority vote.
15. Joint agreements with other governmental units; consolidated department participation.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Short title

This act shall be known and may be cited as the Optional Forms of Municipal Administration Act.
Added by St.1987, c. 756.

§ 2. Definitions

As used in this chapter, the words "board of registrars of voters", "city council" and "board of selectmen" shall include any local authority of different designation performing like duties. The word "agency" shall include any multiple member body, department, division or office of a city or town.
Added by St.1987, c. 756.

§ 3. Adoption authorized; conditions; revocation or rescission

Every city having a population of less than one hundred and fifty thousand and every town may, in the manner provided in this chapter, adopt any of the optional forms of municipal administration which are provided in this chapter and may, in the manner provided in section nine provide for the revocation or rescission of any such acceptance. The adoption of any plan under the provisions of this chapter shall be deemed to be an amendment to any contrary provisions of a local charter or laws having the force of a charter.
Added by St.1987, c. 756.

§ 4. Adoption; initiation by petition

The adoption of an optional plan of municipal administration under this chapter shall be initiated by filing with the board of registrars of voters of the city or town, a petition signed by at least ten per cent of the number of registered voters residing in such city or town at the preceding state election. Such petition may consist of a number of separate sheets, but each sheet shall be in substantially the form prescribed therefor in section five and shall be signed and completed in accordance with the instructions contained therein. The city or town clerk shall furnish forms for such petition to any registered voter of the city or town requesting the same. Within thirty days from such filing, the board shall check each name to be certified by it on the petition, shall certify thereon the number of signatures so checked which are names of registered voters in the city or town, and shall report the results to the city council in the city or town, or board of selectmen, as the case may be, by filing its report with the city or town clerk. Only names so checked shall be deemed to be the names of registered voters for purposes of such petition. The board need not certify more than one hundred and forty per cent of the number of names required to file a petition, and names not certified in the first instance shall not thereafter be certified on the same petition.

Objections to the sufficiency and validity of the signatures on any such petition as certified by the board of registrars of voters shall be made in the same manner as provided by law for objections to nominations for city or town offices, as the case may be.
Added by St.1987, c. 756.

§ 5. Petition; form

The petition shall be in substantially the following form: To the (city council) (board of selectmen)

of (name of city/town) We the undersigned, registered voters of the (city/town of) respectfully petition your honorable body to cause to be submitted to vote of the voters the following question:—"Shall the (city/town of) adopt the optional form of municipal administration summarized as follows, according to the provisions of chapter forty-three C of the General Laws providing for optional plans of municipal administration?" The text of the summary from the applicable section shall follow.

Added by St.1987, c. 756. Amended by St.1990, c. 526, § 13.

§ 6. Petition; submission to voters

Within thirty days of receipt of certification by the board of registrars of voters that a petition contains sufficient valid signatures the city council or board of selectmen shall by order provide for submission of the question as specified in the petition to the voters of the city or town at the first regular city election, or at the first annual or biennial town meeting for the election of town officers, held on or after the sixtieth day following the adoption of the order. Said order shall not require the concurrence of the mayor in a city and shall not be subject to referendum. If an order of the city council or board of selectmen under this section has not been adopted within the thirty days specified above, the question contained in the petition shall be submitted to the voters at the first regular city election, or the first annual or biennial town meeting for the election of town officers, held on or after the ninetieth day after receipt by the city council or board of selectmen of certification provided for in the first sentence of this section.

Added by St.1987, c. 756.

§ 7. Council or board proposal; submission to voters

The city council or board of selectmen may submit to the voters of the city or town a proposal for the acceptance of any of the optional plans of municipal administration which are provided in this chapter in the same manner and with the same force and effect as is hereby provided for submission by petition.

Added by St.1987, c. 756.

§ 8. Vote on two or more plans

If two or more optional plans of municipal administration are passed at the same election containing conflicting provisions the one receiving the greatest number of votes shall take effect.

Added by St.1987, c. 756.

§ 9. Revocation or rescission of plan; home rule alternative

At any time after four years following the date of an election at which any of the plans provided in this chapter has been adopted by the voters, a question to revoke or to rescind such acceptance may be submitted to the voters in the same manner as provided in sections four to seven, inclusive. Such question shall be in the following form: "Shall the (city/town of) revoke its adoption of the optional form of municipal administration summarized as follows?" The text of the summary from the applicable section shall follow.

Notwithstanding the provisions of the first paragraph of this section, any city or town which has adopted any of the optional plans of municipal administration which are provided for in this chapter may make some other provision for municipal administration under procedures made available in chapter forty-three B, at any time, and so far as such provisions may be inconsistent with the provisions of any optional plan in this chapter, the provisions of the charter or charter amendment adopted pursuant to the provisions of said chapter forty-three B shall be deemed to prevail and to supercede the provisions of this chapter.

Added by St.1987, c. 756. Amended by St.1990, c. 526, § 14.

§ 10. Effect of adoption; employee transfer; consolidation of agencies

Any person holding any office or position in the service of a city or town which accepts one of the optional forms of administration provided in this chapter and who is employed in an office or agency which is merged with another or abolished or otherwise constituted shall be transferred to the department or agency thereby created without reduction in compensation, or impairment of any civil service, retirement, pension, seniority, vacation, sick leave or other rights or benefits to which then entitled. Any reduction in force which is to result from the new form of administration shall be accomplished through attrition, or other reassignment and not by dismissal.

All books, papers, documents, equipment, building facilities, land and other property, both real and personal, which are in the custody and control

of any agency affected by a consolidation under the provisions of this chapter shall forthwith upon the establishment of any new agency be transferred by the former agency to such new agency.

All monies which have been appropriated to any department or agency which is included in any consolidation under the provisions of this chapter shall, upon the establishment of the new agency, be credited to the account of such new agency. All contracts in force at the time any new agency is created in which any department or agency whose powers or functions are being assumed by the new agency is a party shall be continued in force by such new agency until they otherwise expire or are cancelled. Any judicial proceeding in which any agency affected by any consolidation under this chapter is a party shall not be affected by the consolidation but any such successor agency shall stand in the place of the former agency.

Added by St.1987, c. 756. Amended by St.1988, c. 199, § 11.

§ 11. Consolidated department of municipal finance; petition summary; ordinance or by-law

(a) The following shall be the summary inserted in the petition described in section five:

"Section eleven of chapter forty-three C of the General Laws authorizes the legislative body to provide, by ordinance or by law, for a consolidated department of municipal finance which may include the offices of accountant, auditor or comptroller, treasurer, collector and assessors."

Notwithstanding any provision of law to the contrary, in any city or town which accepts the provisions of this section by vote of the people, the legislative body, subject to all applicable provisions of the city or town charter, shall have the authority to adopt an ordinance or by-law providing for a consolidated department of municipal finance.

Any ordinance or by-law adopted pursuant to the provisions of this section shall provide for (i) a director of municipal finance who shall be appointed by and shall be responsible to the chief executive officer or to the chief administrative officer of the city or town as the ordinance or by-law shall specify, (ii) the director of municipal finance to serve, ex-officio, as the accountant, auditor, comptroller, treasurer, collector or treasurer-collector of the city or town; provided, however, that no director of municipal finance shall serve, ex-officio, as both accountant, auditor or comptroller and treasurer, collector or treasurer-collector and (iii), the term of the office of the director of municipal finance which shall not be less than three nor more than five years, subject to removal as may be otherwise provided in the charter of such city or town.

Any ordinance or by-law adopted pursuant to the provisions of this section may include, but need not be limited to, the following: (i) coordination of all financial services and activities, (ii) maintenance of all accounting records and other financial statements, (iii) payment of all obligations, (iv) receipt of all funds due, (v) assistance to all other city or town departments and offices in any matter related to financial affairs, (vi) monitoring of the expenditure of all funds, including periodic reporting to appropriate agencies on the status of accounts, (vii) supervision of all purchases of goods, materials and supplies and maintenance of inventory controls, (viii) supervision of all data processing facilities and, (ix) any other matter relating to municipal finance as may be determined necessary or desirable in such ordinance or by-law.

Any ordinance or by-law adopted pursuant to the provisions of this section shall provide for the appointment of all other personnel necessary to staff the department as constituted in the ordinance or by-law. Unless some other provision is made in the city or town charter for the appointment of officers and employees the director of municipal finance shall appoint all personnel under his direction and control subject to the approval of the appointing authority as provided for his office.

Added by St.1987, c. 756. Amended by St.1992, c. 50.

§ 12. Consolidated department of community development; petition summary; ordinance or by-law

(a) The following shall be the summary inserted in the petition described in section five:

"Section twelve of chapter forty-three C of the General Laws authorizes the legislative body to provide, by ordinance or by-law, for a consolidated department of community development which may include the redevelopment authority, the planning board, the industrial development commission, industrial development financing authority or any other municipal office or agency exercising or authorized to exercise any community or economic development activities."

(b) Notwithstanding any other provision of law to the contrary in any city or town which accepts the provisions of this section, the legislative body,

subject to all applicable provisions of the city or town charter, shall have the authority to adopt an ordinance or by-law providing for a consolidated department of community development.

(c) Any ordinance or by-law adopted pursuant to this section shall provide for (i) a director of community development who shall be appointed by and shall be responsible to the chief executive or chief administrative officer of the city or town as the ordinance or by-law shall specify, (ii) the term of office of the director of community development which shall not be less than three nor more than five years, subject to removal as may be otherwise provided in the charter of said city or town, (iii) a community development board which shall consist of five members, one of whom shall be appointed by the director of housing and community development for a term of five years, and four members who shall be appointed by the chief executive or chief administrative officer of the city or town as the ordinance or by-law shall specify, for terms of five years each, all such terms to be so arranged so that only one term expires each year.

(d) Any ordinance or by-law adopted pursuant to this section may include, but need not be limited to, providing for the inclusion through the abolishment of any of the agencies hereinafter enumerated, in whole or in part, or by placing any such agency as may be continued under the administrative control of the director of community development. Such agencies may include the redevelopment authority, the industrial development financing authority, the industrial development commission, the planning board and any other local agency which exercises or is authorized to exercise any community or economic development activity, but shall not include the housing authority.

Insofar as any power or function which is assigned to the department of community development through the abolishment of any agency under the provisions of chapter forty D, forty-one, forty-one A, one hundred and twenty-one A, one hundred and twenty-one B, or any other law relating to community or economic development, to be exercised specifically or exclusively by a multiple member body, such power or function shall be assigned to the community development board.

(e) Any ordinance or by-law adopted pursuant to this section shall provide for the appointment of all other personnel necessary to staff the department as constituted in the ordinance or by-law. Unless some other provision is made in the city or town charter for the appointment of officers and employees, the director of community development shall appoint all personnel under his direction and control subject to the approval of the appointing authority as provided for his office.

Added by St.1987, c. 756. Amended by St.1998, c. 161, § 287.

§ 13. Consolidated department of municipal inspections; petition summary; ordinance or by-law

(a) The following shall be the summary to be inserted in the petition described in section five:

"Section thirteen of chapter forty-three C of the General Laws authorizes the legislative body to provide, by ordinance or by-law, for a consolidated department of municipal inspections which may include the inspections currently being made by the building inspector, wire inspector, plumbing inspector, gas fitting inspector, health agent and others as the ordinance or by-law may specify."

(b) Notwithstanding any provision of law to the contrary, in any city or town which accepts the provisions of this section by vote of the people, the legislative body, subject to all applicable provisions of the city or town charter, shall have the authority to adopt an ordinance or by-law providing for a consolidated department of municipal inspections.

(c) Any ordinance or by-law adopted pursuant to this section shall provide for (i) a director of municipal inspections who shall be appointed by and shall be responsible to the chief executive officer or the chief administrative officer of the city or town as the ordinance or by-law shall specify, (ii) the term of office of the director of municipal inspections which shall be not less than three nor more than five years, subject to removal as may be otherwise provided in the charter of the city or town.

(d) Any ordinance or by-law adopted pursuant to this section may include, but need not be limited to, the following: (i) coordination of all inspection functions carried out by any municipal officer or agent, (ii) maintenance of all records relating to inspections in a central place through a common index, (iii) a single application process which would indicate all inspections which might be necessary, including, but need not be limited to, any inspections under the zoning and other local ordinance or by-law, building code, wire code, plumbing and gas code, state sanitary code, board of health rules and regulations, fire code, conserva-

tion commission, historic districts commission and any other local inspections as may be otherwise authorized. Any ordinance or by-law adopted pursuant to this section may provide that any agency performing an inspection function shall be continued but that for administrative purposes all personnel performing inspection functions for the existing agency shall, when performing such inspection services, be subject to the administrative control and direction of the director of municipal inspections, but not otherwise.

(e) Any ordinance or by-law adopted pursuant to this section shall provide for the appointment of all other personnel necessary to staff the department as constituted in the ordinance or by-law. Unless some other provision is made in the city or town charter for the appointment of officers and employees the director of municipal inspections shall appoint all personnel under his direction and control subject to the approval of the appointing authority as provided for his office.

Added by St.1987, c. 756.

§ 14. Adoption, revocation or rescission of plan; majority vote

Notwithstanding any provision of this chapter, any city or town may, by majority vote as defined in section one of chapter forty-four, adopt an optional plan of municipal administration under this chapter or revoke or rescind a plan accepted pursuant to this section; provided, that for a town the majority vote necessary to adopt, revoke, or rescind a plan pursuant to this section shall be at the annual meeting.

Added by St.1992, c. 133, § 373.

§ 15. Joint agreements with other governmental units; consolidated department participation

Consolidated departments established under authority of this chapter may participate in agreements entered into pursuant to the provisions of section four A of chapter forty for joint performance of services with other governmental units.

Added by St.1992, c. 133, § 373.

CHAPTER 43D

EXPEDITED PERMITTING

Chapter 43D of the General Laws was added by St.2006, c. 205, § 11.

Selected section

Section

6. Informal procedure for advisory review; fee.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 6. Informal procedure for advisory review; fee

(a) In accordance with this chapter, the governing body may establish an informal procedure to allow permit applicants to obtain advisory review by a technical review team of any issue of law, policy, procedure, or classification that the applicant claims is in dispute between the applicant and the issuing authority which has affected or will affect the ability of the applicant to obtain timely review of the permit application. The procedures shall provide for filing a request for review by the applicant, representation by the issuing authority on the technical review team, and a period not to exceed 30 days for issuance of a decision. Use of this procedure shall toll the review time periods. An advisory determination or ruling made pursuant to a procedure established in this section shall not constitute a decision or final action and shall not be subject to any right of administrative or judicial review.

(b) The governing body may establish an additional and separate fee, in addition to any fees that may be assessed by an issuing authority in order to carry out its duties under this chapter, and may deposit the fees in a special account to be maintained by the treasurer. The special account, including any accrued interest shall be expended at the direction of the governing body, without further appropriation; but, the funds shall be expended only in carrying out its responsibilities under this chapter.

Added by St.2006, c. 205, § 11, eff. Aug. 2, 2006.

CHAPTER 44

MUNICIPAL FINANCE

Section

1. Definitions.
2. Limitations and restrictions upon manner of incurring debt.
3. Computation of indebtedness.
4. Temporary loans in anticipation of revenue; conditions; limitations.
4A. Repealed.
4B. Expired.
5 to 5B. Repealed.
6. Power to borrow for payment of land or highway expenditures.
6A. Power to borrow in anticipation of reimbursement by commonwealth.
7. Cities and towns; purposes for borrowing money within debt limit.
8. Cities and towns; purposes for borrowing money outside debt limit.
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64. Payment of bills incurred in excess of appropriations.
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The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Definitions

In this chapter, unless the context otherwise requires, the following words shall have the following meanings:

"Revenue", receipts from (1) the exercise of governmental power of taxation and police control; (2) donations, gifts, grants and subvention for governmental use; (3) performing services for compensation and from the operation or management of productive enterprises, investments and properties of government. Receipts from the sale or disposal of capital assets, loans, refunds and various temporary transactions are in the nature of non-revenue.

"Director", director of accounts in the department of revenue.

"Majority vote" and "two thirds vote", as applied to towns or districts, the vote of a majority or two thirds, respectively, of the voters present and voting at a meeting duly called, and, as applied to cities, the vote taken by yeas and nays of a majority or of two thirds, as the case may require, of all the members of each branch of the city government where there are two branches, or of all the members where there is a single branch of the city government, or of a majority or two thirds of the commissioners where the city government consists of a commission; and in every case subject to the approval of the mayor, where such approval is required by the charter of the city.

"Municipal finance oversight board", a board composed of the attorney general, the state treasurer, the state auditor, and the director of accounts in the department of revenue, or their designees.

"Town" shall not include city.

"District" shall mean a fire, water, sewer, water pollution abatement, refuse disposal, light, or improvement district, or any other district, howsoever

named, formed for the purpose of carrying out any of the aforementioned functions, whether established under general law or special act.

"Equalized valuation" shall mean the equalized valuation of the aggregate property in a city or town subject to local taxation, as most recently reported by the commissioner of revenue to the general court under the provisions of section ten C of chapter fifty-eight.

"Sewage" shall mean wastewater from homes, public buildings, commercial or industrial establishments, or any combination thereof, and shall include any surface or ground water that may be present therein.

"Sewage treatment and disposal facilities" shall mean any wastewater treatment facility used for treating, neutralizing or stabilizing sewage including treatment or disposal plants; the necessary intercepting, outfall and outlet sewers; pumping stations integral to such facilities; and equipment and appurtenances related to the foregoing.

Amended by St.1946, c. 358, § 10; St.1967, c. 46, § 1; St.1968, c. 23, § 1; St.1969, c. 505, § 5; St.1969, c. 597, § 1; St.1978, c. 514, §§ 29, 30; St.2004, c. 149, § 95, eff. July 1, 2004.

Historical and Statutory Notes

St.1913, c. 719, § 2.
St.1914, c. 143, § 1.
St.1919, c. 350, §§ 54, 113.
St.1931, c. 394, § 10.

§ 2. Limitations and restrictions upon manner of incurring debt

Except as otherwise expressly permitted by law, cities, towns and districts shall incur debts only in the manner of voting and within the limitations as to amount and time of payment prescribed in this chapter; but this section shall not be construed as prohibiting any city, town or district from placing additional restrictions, consistent with this chapter, upon the manner of incurring debt, nor as affecting the right of any city, town or district to incur debt under any special act which has or shall become effective after January first, nineteen hundred and twenty-one, or at any time in the case of debt of the city of Boston for tunnel or transit purposes; but no debt may be authorized under a general or special act except by a two-thirds vote, unless the act so provides. All provisions of law providing for sinking funds for the payment of debt of the city of Boston incurred for transit or tunnel purposes shall continue to be applicable to said debt.

Amended by St.1936, c. 224, § 4; St.1946, c. 358, § 11; St.1963, c. 121.

Historical and Statutory Notes

St.1875, c. 209.
P.S.1882, c. 29, §§ 1, 7.
R.L.1902, c. 27, §§ 1, 8.
St.1913, c. 719, §§ 1, 7, 22.
St.1928, c. 396, § 1.

§ 3. Computation of indebtedness

The indebtedness of a city or town for a specific purpose shall be its net indebtedness, which shall be the total indebtedness for that purpose after deducting the amount of sinking funds applicable to the same. The indebtedness to which the debt limit imposed by section ten shall be applied shall be the total net indebtedness of the city or town after excluding debts exempted from the operation of said section.

Historical and Statutory Notes

St.1875, c. 209, §§ 6, 10.
St.1880, c. 32.
P.S.1882, c. 29, §§ 2, 3.
St.1883, c. 127.
St.1894, c. 317, § 21, cl. 2, f.
St.1894, c. 522, § 34, cl. 4.
St.1895, c. 164.
R.L.1902, c. 8, § 5, cl. 12; c. 27, § 2.

§ 4. Temporary loans in anticipation of revenue; conditions; limitations

Cities, towns and districts may incur debt in any fiscal year for temporary loans in anticipation of the revenue of the fiscal year in which the debt is incurred, and may issue notes therefor to an amount which for cities and towns shall not exceed in the aggregate the total tax levy of the fiscal year preceding the fiscal year in which the debt is incurred, together with the net amount received during such preceding fiscal year from the excise on motor vehicles and trailers, as provided by chapter sixty A, and the payments made by the commonwealth in lieu of taxes on account of property taken for institutions or for metropolitan district purposes; and for districts shall not exceed the receipts from taxes, rates and services of the fiscal year preceding that in which the debt is incurred, and for newly established districts which have not yet had receipts from taxes, rates and services throughout an entire fiscal year, an amount as fixed by vote of the district. The aggregate amount of such notes shall not exceed an amount reasonably required, which amount, in the case of notes of a town or district, shall be ap-

proved by the director or by counsel and shown on an estimated cash flow statement prepared on a form approved by the director, by such other evidence as the director or counsel may require, and filed with the treasurer of the town or district and the director. Such notes shall be payable, and shall be paid, not later than one year from their date and said one-year term may occur within the span of two separate fiscal years. Such notes shall not be renewed or paid by the issue of new notes, except as provided in section seventeen. Notes may be authorized and issued under this section by the treasurer of the city, town or district, with the approval of the officer, committee, board or other body required by law to countersign such notes. Amended by St.1934, c. 11, § 1; St.1936, c. 16; St.1946, c. 358, § 12; St.1947, c. 298, § 2; St.1964, c. 246; St.1967, c. 46, § 1A; St.1967, c. 73, § 1; St.1969, c. 849, § 47; St.1979, c. 782, § 1; St.1983, c. 473, § 1; St.1985, c. 238; St.1990, c. 210, § 1; St.1992, c. 143, § 1.

Historical and Statutory Notes

St.1875, c. 209, § 2.
P.S.1882, c. 29, § 6.
St.1885, c. 312, § 4.
St.1889, c. 372.
St.1891, c. 221.
St.1893, c. 23.
R.L.1902, c. 27, § 6.
St.1913, c. 719, §§ 1, 3.
St.1914, c. 143, § 2.
St.1918, c. 26, § 1.
St.1918, c. 257, § 159.
St.1919, c. 5.
St.1920, c. 2.

§ 4A. Repealed, 1990, 210, Sec. 2

§ 4B. Expired. See 1976, 4, Sec. 33

§§ 5 to 5B. Repealed, 1969, 849, Sec. 48; 1971, 766, Sec. 11

§ 6. Power to borrow for payment of land or highway expenditures

Cities and towns may, by a majority vote, incur debt for temporary loans for the payment of land damages or any proportion of the general expenses of altering a grade crossing which they are required primarily to pay, or any proportion of the expense of constructing a highway or installing traffic control devices and other devices appurtenant thereto in anticipation of reimbursement by the commonwealth or county, such reimbursement first having been agreed upon by the commissioner of highways or county commissioners, or the sums allotted for such reimbursements having first been certified as available by the commissioner of highways or county commissioners, and may issue notes therefor for a period not exceeding two years from their date; and when any money so paid is repaid to the municipality, it shall be applied to the discharge of the loan. Notes issued under this section shall not be renewed or paid by the issue of new notes, except as provided in section seventeen. Amended by St.1957, c. 385; St.1962, c. 607, § 1; St.1969, c. 428, § 1; St.1991, c. 552, § 36.

Historical and Statutory Notes

St.1892, c. 178.
R.L.1902, c. 27, § 7.
St.1913, c. 719, §§ 1, 4.
St.1918, c. 26, § 2.
St.1931, c. 394, § 11.

§ 6A. Power to borrow in anticipation of reimbursement by commonwealth

If a city, town or district has been allotted a grant by the commonwealth, or any agency or department thereof, for any purpose for which the city, town or district may incur debt that may be payable over a term of five years or longer, and is required primarily to pay that proportion of the expense for which reimbursement is to be received from the commonwealth, such reimbursement first having been agreed upon by the commonwealth or such agency or department, in order to provide the necessary funds to meet the expense for which reimbursement is to be made, the treasurer of the city may, with the approval of the official whose approval is required by the city charter in the borrowing of money, the treasurer of the town may, with the approval of the board of selectmen, and the treasurer of the district may, with the approval of the prudential committee, if any, otherwise the commissioners, incur debt outside the debt limit and issue notes therefor for a period not exceeding two years from their dates, and may refund the same from time to time; provided, however, that no loan shall be so refunded unless the auditor, in the case of a city, or the accountant or chief accounting officer in the case of a town or district which has such an officer, otherwise the treasurer, shall certify in a writing filed in the office of the treasurer, where it shall be open to inspection by the public, that at the time such loan is refunded, the city, town or district remains entitled to receive reimbursement in an amount at least equal to the amount of the refunding loan. The proceeds of such reimbursement shall be applied to the discharge of the loan, without the necessity of further appropriation. In the event the city, town or district shall no longer be entitled to receive

reimbursement in an amount sufficient to pay all or any portion of a loan issued under this section at the time such loan matures, the loan shall be paid from revenue funds of the city, town or district to the extent it can no longer be refunded under this section. A payment made by a city, town or district as provided in the preceding sentence shall be reported by the auditor or accountant of the city, town or district, or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the determination of the next annual tax rate, unless the city, town or district has otherwise made provision therefor.

Amended by St.1962, c. 607, § 2; St.1968, c. 598, § 1; St.1969, c. 428, § 2; St.1973, c. 1140, § 1; St.1975, c. 706, § 103; St.1978, c. 537, § 1; St.1979, c. 668; St.1984, c. 236.

Historical and Statutory Notes

St.1921, c. 366.
St.1931, c. 394, § 12.

§ 7. Cities and towns; purposes for borrowing money within debt limit

Cities and towns may incur debt, within the limit of indebtedness prescribed in section ten, for the purposes hereinafter set forth, and payable within the periods hereinafter specified or, except for clauses (3C), (11), (16), (18), (19), (21) and (22), within such longer period not to exceed 30 years based upon the maximum useful life of the public work, improvement or asset being financed, as determined in accordance with guidelines established by the division of local services within the department of revenue:

(1) For the construction or reconstruction of surface drains, sewers, sewerage systems and sewage treatment and disposal facilities, thirty years.

(1A) For the lining by cement or metal of sewers constructed for sanitary and surface drainage purposes and for sewage disposal, ten years.

(2) For acquiring land for public parks or playgrounds or public domain under chapter forty-five, thirty years; but no indebtedness incurred for public domain shall exceed one half of one per cent of the equalized valuation of the city or town.

(2A) For the construction of an artificial ice-skating rink for which refrigeration equipment is required on land owned by the city or town, fifteen years.

(2B) For the construction of an outdoor swimming pool on land owned by the city or town, fifteen years.

(3) For acquiring land, or interests in land, for any purpose for which a city or town is or may hereafter be authorized to acquire land or interests therein, not otherwise specifically provided for; for the construction of buildings which cities or towns are or may hereafter be authorized to construct, or for additions to such buildings where such additions increase the floor space of said buildings, including the cost of original equipment and furnishings of said buildings or additions, twenty years.

(3A) For remodeling, reconstructing or making extraordinary repairs to public buildings owned by the city or town, including original equipment and landscaping, paving and other site improvements incidental or directly related to such remodeling, reconstruction or repair, for a term not exceeding 20 years.

(3B) For energy conservation, alternative energy or renewable energy improvements to public buildings or facilities owned or leased by the city or town, or on property owned or leased by the city or town, 20 years.

(3C) For a revolving loan fund established under section 53E¾; to assist in the development of renewable energy and energy conservation projects on privately-held buildings, property or facilities within the city or town, 20 years.

(4) For the construction or reconstruction of bridges of stone or concrete or of iron superstructure, twenty years.

(5) For the original construction of public ways or the extension or widening thereof, including land damages and the cost of pavement and sidewalks laid at the time of said construction, or for the construction of stone, block, brick, cement concrete, bituminous concrete, bituminous macadam or other permanent pavement of similar lasting character, or for the original construction and surfacing or the resurfacing with such pavement of municipally owned and operated off-street parking areas, under specifications approved by the department of highways, ten years.

(6) For macadam pavement or other road material, or for the resurfacing with such pavement or other road material of municipally owned or operated off-street parking areas, under specifications approved by the department of highways, or for the

construction of sidewalks of brick, bituminous concrete, stone or concrete, five years.

(7) For the construction of walls or dikes for the protection of highways or property, ten years.

(8) For the purchase of land for cemetery purposes, ten years.

(9) For the cost of equipment, 5 years.

(9A) For the remodeling, reconstruction or rehabilitation of existing firefighting apparatus and heavy equipment including, but not limited to, front-end loaders, road graders, sidewalk plows and motorized sweepers; five years.

(10) For connecting dwellings or other buildings with common sewers, when the cost is to be assessed in whole or in part on the abutting property owners, five years.

(11) For the payment of final judgments, one year.

[There is no clause (12).]

(13) In Boston, for acquiring fire or police boats, fifteen years.

(14) For traffic signal, or public lighting installations, fire alarm or police communication installations and for the purpose of extending and improving such installations, ten years.

(15) In Boston, for the original construction, or the extension or widening, with permanent pavement of lasting character conforming to specifications approved by the state department of highways and under the direction of the board of park commissioners of the city of Boston, of ways, other than public ways, within or bounding on or connecting with any public park in said city, including land damages and the cost of pavement and sidewalks laid at the time of said construction, or for the construction of such ways with stone, block, brick, cement concrete, bituminous concrete, bituminous macadam or other permanent pavement of similar lasting character under specifications approved by said department of highways, ten years.

(16) For the payment of premiums for fire insurance contracts or policies covering a period of five years, four years.

(17) For improvements made under section twenty-nine of chapter ninety-one and for the construction or reconstruction of public wharves, ten years.

(17A) For dredging of tidal and nontidal rivers and streams, harbors, channels and tidewaters, 10 years.

(18) For the payment of charges incurred under contracts authorized by section four of chapter forty for the expert appraisal of taxable property or for the preparation of assessors maps, including charges for aerial mapping in connection with the preparation of such maps, ten years.

(19) For the payment of charges incurred under contracts authorized by section four D of chapter forty, but only for such contracts as are for purposes comparable to the purposes for which loans may be authorized under the provisions of this section. Each authorized issue shall constitute a separate loan, and such loans shall be subject to the conditions of the applicable clauses of this section.

(20) For developing land for burial purposes and for constructing paths and avenues and embellishing the grounds in said developed areas in a cemetery owned by the city or town, five years. The proceeds from the sale of the exclusive rights of burials in any of the lots in such cemetery shall be kept separate from other funds and be appropriated for the payment of any indebtedness incurred for such developments, notwithstanding the provisions of section fifteen of chapter one hundred and fourteen.

(21) For the cost of architectural services for plans and specifications for any proposed building for which a city, town or district is authorized to borrow, or for the cost of architectural services for plans and specifications for additions to buildings owned by a city, town, or district where such additions increase the floor space of said buildings, five years if issued before any other debt relating to said buildings or additions is authorized, otherwise the period fixed by law for such other debt relating to said building or additions; provided, however, that at the time the loan is issued the city, town or district owns the land on which the proposed building or additions would be constructed.

(22) For the cost of engineering or architectural services for plans and specifications for any project not defined in clause (21) for which a city, town or district is authorized to borrow, five years if issued before any other debt relating to said project is authorized, otherwise the period fixed by law for such other debt relating to said project.

(23) For the construction of municipal tennis courts, including platform tennis courts and the acquisition of land and the construction of buildings therefor, including the original equipment and furnishing of said buildings, fifteen years.

[There is no clause (24).]

(25) For the construction of municipal outdoor recreational and athletic facilities, including the acquisition and development of land and the construction and reconstruction of facilities; fifteen years.

(26) For energy audits as defined in section three of chapter twenty-five A, if authorized separately from debt for energy conservation or alternative energy projects; five years.

(27) For the undertaking of projects for the preservation and restoration of publicly-owned freshwater lakes and great ponds in accordance with the provisions of section thirty-seven A of chapter twenty-one.

(28) For the development, design, purchase and installation of computer hardware, other data processing equipment and computer assisted integrated financial management and accounting systems; ten years.

(29) For the development, design, purchase of computer software incident to the purchase, installation and operation of computer hardware and other data processing equipment and computer assisted integrated financial management and accounting systems; five years.

(30) For installation, repair or replacement of exposed structural or miscellaneous steel, which has been treated with the hot-dip galvanizing process; three years.

(31) For the purpose of removing asbestos from municipally owned buildings; ten years.

(32) For the cost of cleaning up or preventing pollution caused by existing or closed municipal facilities not referenced in clause (21) of section 8, including cleanup or prevention activities taken pursuant to chapter 21E or chapter 21H, 10 years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to and approved by the department of environmental protection.

(33) For the construction or reconstruction of seawalls, riprap, revetments, breakwaters, bulkheads, jetties and groins, stairways, ramps and other related structures, 20 years.

(34) For any other public work, improvement or asset not specified in this section, with a maximum useful life of at least 5 years, determined as provided in this paragraph, 5 years.

Debts may be authorized under this section only by a two-thirds vote.

Amended by St.1936, c. 224, § 5; St.1946, c. 358, §§ 13, 14; St.1947, c. 101; St.1947, c. 207, §§ 1, 2; St.1948, c. 275, §§ 3, 4; St.1948, c. 383; St.1951, c. 54; St.1951, c. 181, §§ 1, 2; St.1951, c. 282, §§ 1, 2; St.1952, c. 38; St.1953, c. 100; St.1955, c. 85, § 2; St.1955, c. 716, § 2; St.1956, c. 596, § 2; St.1957, c. 219; St.1959, c. 73, § 2; St.1962, c. 380; St.1963, c. 81; St.1964, c. 28; St.1965, c. 206, § 1; St.1965, c. 581, § 1; St.1966, c. 63, § 3; St.1966, c. 234, § 1; St.1967, c. 883, § 2; St.1968, c. 228, § 1; St.1969, c. 481, §§ 1 to 3; St.1969, c. 849, §§ 49, 50; St.1970, c. 63; St.1970, c. 79, §§ 1, 2; St.1971, c. 54; St.1971, c. 766, § 11; St.1973, c. 57; St.1973, c. 401; St.1974, c. 88, § 1; St.1975, c. 184; St.1976, c. 11, § 1; St.1976, c. 189; St.1976, c. 404; St.1977, c. 121; St.1977, c. 232, § 2; St.1978, c. 119, §§ 2, 3; St.1979, c. 796, §§ 6, 7; St.1981, c. 101; St.1981, c. 628, § 3; St.1982, c. 98; St.1983, c. 83; St.1983, c. 88; St.1987, c. 163; St.1987, c. 584, §§ 12, 13; St.1989, c. 171; St.1989, c. 341, § 26; St.1989, c. 594, §§ 1 to 3; St.1991, c. 552, § 37; St.1993, c. 110, § 106; St.1993, c. 413; St.1996, c. 142; St.2003, c. 46, §§ 22, 23, eff. July 31, 2003; St.2008, c. 169, § 50, eff. July 2, 2008; St.2010, c. 188, §§ 27 to 31, eff. July 27, 2010.

Historical and Statutory Notes

P.S.1882, c. 29, § 8.
St.1882, c. 154, § 9.
St.1882, c. 255, § 7.
St.1892, c. 245, § 6.
St.1893, c. 225, § 3.
St.1894, c. 221.
St.1899, c. 319, § 1.
R.L.1902, c. 27, § 11; c. 28, §§ 10, 21, 29; c. 49, § 31.
St.1903, c. 375.
St.1908, c. 341, § 3.
St.1913, c. 564, §§ 1, 5.
St.1913, c. 719, §§ 1, 5, 6.
St.1915, c. 162, § 1.
St.1916, c. 111, § 1.
St.1919, c. 61, § 2.
St.1920, c. 114.
G.L.1921, c. 44, § 8.
St.1923, c. 338.
St.1928, c. 64.
St.1928, c. 324.
St.1928, c. 350, § 2.
St.1931, c. 164.

§ 8. Cities and towns; purposes for borrowing money outside debt limit

Cities and towns may incur debt, outside the limit of indebtedness prescribed in section ten, for the following purposes and payable within the periods hereinafter specified or except with respect to clauses (1), (2), (3A), (5), (6), (7), (9) and (19), within such longer period not to exceed 30 years based upon the maximum useful life of the public

work, improvement or asset being financed, as determined in accordance with guidelines established by the division of local services within the department of revenue:

(1) For temporary loans under sections four, six, six A, seventeen and seventeen A, the periods authorized by those sections.

(2) For maintaining, distributing and providing food, other common necessaries of life and temporary shelter for their inhabitants upon the occasions and in the manner set forth in section nineteen of chapter forty, two years.

(3) For establishing or purchasing a system for supplying a city, town, or district and its inhabitants with water, for taking or purchasing water sources, either from public land or private sources, or water or flowage rights, for the purpose of a public water supply, or for taking or purchasing land for the protection of a water system, thirty years.

(3A) For conducting groundwater inventory and analysis of the community water supply, including pump tests and quality tests relating to the development of using said groundwater as an additional source or a new source of water supply for any city, town or district, ten years.

(4) For the construction or enlargement of reservoirs, and the construction of filter beds, standpipes, buildings for pumping stations including original pumping station equipment, and buildings for water treatment, including original equipment therefor, and the acquisition of land or any interest in land necessary in connection with any of the foregoing, thirty years.

(4A) For remodeling, reconstructing or making extraordinary repairs to reservoirs and filter beds, thirty years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to the department of environmental protection, and the approval of said department has been granted therefor.

(5) For the laying and relaying of water mains of not less than six inches but less than sixteen inches in diameter, and for lining and relining such mains with linings of not less than one-sixteenth of an inch, for the development of additional well fields, for wells and for pumping station equipment, forty years.

(6) For constructing and reconstructing and laying and relaying aqueducts and water mains of sixteen inches or more in diameter, and for lining such mains with linings of not less than one-sixteenth of an inch, forty years.

(7) For the extension of water mains, forty years.

(7A) For the purchase and installation of water meters, ten years.

(7B) For the payment of the town's share of the cost to increase the storage capacity of any reservoir, including land acquisition, constructed by the water resources commission for flood prevention or water resources utilization, twenty years.

(7C) For the purchase, replacement or rehabilitation of water departmental equipment, ten years.

(8) For establishing, purchasing, extending, or enlarging a gas or electric lighting plant, a community antenna television system, whether or not operated by a gas or electric lighting plant, or a telecommunications system operated by a municipal lighting plant, 20 years; but the outstanding indebtedness so incurred shall not exceed in a town 5 per cent and in a city 2.5 per cent of the equalized valuation of such town or city; provided, however, that the majority of the members of the municipal finance oversight board, may authorize a city to incur indebtedness under this clause in excess of 2.5 per cent but not in excess of 5 per cent of the equalized valuation of such city, and may authorize a town to incur indebtedness under this clause in excess of 5 per cent but not in excess of 10 per cent of the equalized valuation of such town.

(8A) For remodeling, reconstructing, or making extraordinary repairs to a gas or electric lighting plant, a community antenna television system, or a telecommunications system operated by a municipal lighting plant, when approved by the majority of the members of the municipal finance oversight board, for such number of years not exceeding ten, as said board shall fix; provided, however, that the indebtedness incurred under this clause shall be included in the limit of indebtedness for gas and electric lighting plants, community antenna television systems or telecommunications systems that are operated by municipal lighting plants, as set forth in clause (8). Each city or town seeking approval by said board of a loan under this clause shall submit to it all plans and other information considered by the board to be necessary for a determination of the probable extended use of such plant, community television antenna system or telecommunications system likely to result from such

remodeling, reconstruction, or repair, and in considering approval under this clause of a requested loan and the terms thereof, special consideration shall be given to such determination.

(9) For such emergency appropriations as shall be approved by a majority of the members of the municipal finance oversight board, not more than two years as determined by the board. As used in this clause, emergency means a sudden, unavoidable event or series of events which could not reasonably have been foreseen or anticipated at the time of submission of the annual budget for approval. Emergency shall not be deemed to include the funding of collective bargaining agreements or such items as were previously disapproved by the appropriating authority for the fiscal year in which such borrowing is sought.

(10) For acquiring land or constructing buildings or other structures, including the cost of original equipment, as memorials to members of the army, navy, marine corps, coast guard, or air force, twenty years; but the indebtedness so incurred shall not exceed one half of one per cent of the equalized valuation of the city or town.

The designation of any such memorial shall not be changed except after a public hearing by the board of selectmen or by the city council of the municipality wherein said memorial is located, notice of the time and place of which shall be given, at the expense of the proponents, by the town or city clerk as the case may be, by publication not less than thirty days prior thereto in a newspaper, if any, published in such town or city; otherwise, in the county in which such town or city lies; and notice of which shall also have been given by the proponents, by registered mail, not less than thirty days prior to such hearing, to all veterans' organizations of such town or city.

[There is no clause (11).]

(12) For acquiring street railway property under sections one hundred and forty-three to one hundred and fifty-eight, inclusive, of chapter one hundred and sixty-one, operating the same, or contributing toward the sums expended or to be expended by a transportation area for capital purposes, ten years; but the indebtedness so incurred shall not exceed two per cent of the equalized valuation of the city or town.

(13) For the acquisition, construction, establishment, enlargement, improvement or protection of public airports, including the acquisition of land, ten years; but the outstanding indebtedness so incurred shall not exceed one per cent of the equalized valuation of the city or town. The proceeds of indebtedness incurred hereunder may be expended for the acquisition, construction, establishment, enlargement, improvement or protection of such an airport, including the acquisition of land, jointly by two or more municipalities.

(14) For the financing of a program of eradication of Dutch elm disease, including all disbursements on account of which reimbursement is authorized or may be authorized by the commonwealth, county, any city or town, or by any manner of assessment or charges, pursuant to and consistent with the provisions of chapter one hundred and thirty-two, five years.

(15) For the construction of sewers, sewerage systems and sewage treatment and disposal facilities, or for the lump sum payment of the cost of tie-in to such services in a contiguous city or town, for a period not exceeding 30 years; provided, however, that either (i) the city or town has an enterprise or special revenue fund for sewer services and that the accountant or auditor or other officer having similar duties in the city or town shall have certified to the treasurer that rates and charges have been set at a sufficient level to cover the estimated operating expenses and debt service related to the fund, or (ii) the issuance of the debt is approved by a majority of the members of the municipal finance oversight board.

(16) For the construction of municipal golf courses, including the acquisition of land, the construction of buildings, and the cost of original equipment and furnishings, twenty years.

(17) For the payment of charges incurred under contracts authorized by section four D of chapter forty, but only for such contracts as are for purposes comparable to the purposes for which loans may be authorized under the provisions of this section. Each authorized issue shall constitute a separate loan, and such loans shall be subject to the conditions of the applicable clauses of this section.

(18) For the construction of a regional incinerator for the purpose of disposing solid waste, refuse and garbage by two or more communities, twenty years, but the indebtedness so incurred shall not exceed three per cent of the last preceding equalized valuation of the city or town.

(19) For the lending or granting of money to industrial development financing authorities and economic development and industrial corporations, with the approval of the Massachusetts office of business development and the director of housing and community development. For the purpose of this clause the city or town may borrow outside its debt limit to an amount not to exceed one hundred thousand dollars or two and one half per cent of its equalized valuation, whichever is the lesser.

(20) For the purposes of implementing project financed in whole or in part by the Farmers Home Administration of the United States Department of Agriculture, pursuant to the provisions of 7 USC 1921, et seq., up to forty years. Regional school districts established pursuant to the provisions of any general or special law shall be authorized to incur debt for the purposes and within the limitations described in this clause.

(21) For the cost of cleaning up or preventing pollution caused by existing or closed landfills or other solid waste disposal facilities, including clean up or prevention activities taken pursuant to chapter twenty-one E or chapter twenty-one H, thirty years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to the department of environmental protection and the approval of said department has been granted therefor.

(22) For the construction of incinerators, refuse transfer facilities, recycling facilities, composting facilities, resource recovery facilities or other solid waste disposal facilities, other than landfills, for the purpose of disposing of waste, refuse and garbage, twenty-five years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to the department of environmental protection and the approval of said department has been granted therefor.

(23) For remodeling, reconstructing or making extraordinary repairs to incinerators, refuse transfer facilities, recycling facilities, resource recovery facilities or other solid waste disposal facilities, other than landfills, owned by the city, town or district, and used for the purpose of disposing of waste, refuse and garbage, for such maximum term not exceeding 10 years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to the department of environmental protection and the approval of said department has been granted therefor.

(24) For the purpose of closing out a landfill area, opening a new landfill area, or making improvements to an existing landfill area, twenty-five years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to the department of environmental protection and the approval of said department has been granted therefor.

Debts, except for temporary loans, may be authorized under this section only by a two thirds vote.

Debts for purposes mentioned in clauses (3), (4), (4A), (5), (6), (7), (7A) and (7B) of this section shall not be authorized to an amount exceeding ten per cent of the equalized valuation of the city or town.
Amended by St.1938, c. 172, § 5; St.1939, c. 457; St.1941, c. 83; St.1946, c. 358, § 15; St.1947, c. 298, §§ 3, 4; St.1952, c. 123, §§ 1, 2; St.1954, c. 106; St.1957, c. 224; St.1957, c. 431; St.1958, c. 70, § 1; St.1958, c. 383, §§ 1, 2; St.1960, c. 592, § 6; St.1962, c. 672, §§ 2, 3; St.1963, c. 82; St.1963, c. 347, § 1; St.1964, c. 736, § 1; St.1965, c. 68; St.1965, c. 98; St.1966, c. 60; St.1967, c. 31; St.1967, c. 160, § 2; St.1967, c. 883, § 3; St.1968, c. 23, §§ 2 to 7; St.1969, c. 481, § 4; St.1969, c. 635; St.1970, c. 55; St.1972, c. 761; St.1973, c. 933, §§ 2, 3; St.1974, c. 41; St.1978, c. 119, § 4; St.1980, c. 77; St.1981, c. 191, §§ 1 to 8; St.1982, c. 22, § 1; St.1983, c. 578, § 1; St.1987, c. 525, § 58; St.1987, c. 584, § 14; St.1989, c. 365; St.1990, c. 177, § 126; St.1992, c. 286, § 123; St.1995, c. 38, § 60; St.1996, c. 15, § 21; St.1998, c. 161, § 288; St.2000, c. 12, § 1; St.2003, c. 46, §§ 24 to 31, eff. July 31, 2003; St.2004, c. 149, §§ 96 to 98, eff. July 1, 2004; St.2010, c. 188, §§ 32, 33, eff. July 27, 2010.

Historical and Statutory Notes

St.1870, c. 93, §§ 2, 3.
St.1873, c. 255.
St.1875, c. 209, §§ 3, 4.
P.S.1882, c. 27, §§ 28, 29; c. 29, §§ 7, 8.
St.1891, c. 370, § 4.
St.1892, c. 245, § 6.
St.1894, c. 182.
St.1895, c. 488, § 21.
R.L.1902, c. 25, § 32; c. 27, §§ 5, 8, 11.
St.1903, c. 375.
St.1908, c. 341, § 2.
St.1913, c. 719, §§ 1, 5, 6.
St.1914, c. 143, § 3.
St.1914, c. 742, § 98.
St.1915, c. 115.
St.1916, c. 286, § 8.
St.1918, c. 205, § 4.
St.1919, c. 61, § 2.
St.1920, c. 292, § 2.
St.1920, c. 591, § 10.
St.1920, c. 599, § 11.
G.L.1921, c. 44, § 7.
St.1921, c. 486, § 11.
St.1923, c. 303, § 1.
St.1926, c. 45.

St.1926, c. 317.
St.1928, c. 291.

§ 8A. Orders authorizing issuance of bonds; authentication

In any city which accepts this section upon its submission in accordance with law at its first regular city election following the effective date of this section, an order authorizing the issue of bonds, notes or certificates of indebtedness for any purpose specified in any applicable clause of section seven, other than clause (11), or for any purposes specified in section eight, other than clause (1), (2) or (9), shall not become effective before the expiration of a period of twenty days from the day upon which such order would become effective except for this section. If within said period a petition signed by registered voters of the city to the number of twelve thousand or equal in number to at least twelve per cent of the total number of such registered voters, whichever is the lesser, and conforming to the provisions of section thirty-eight of chapter forty-three relative to initiative petitions in cities governed by said chapter, shall be filed with the city clerk, such filing in cities subject to said section thirty-eight to be in the manner therein provided, asking that the question of approving or disapproving such order be submitted to the registered voters of the city, such order shall be further suspended from becoming effective and said city clerk shall forthwith transmit such petition to the city council, which shall immediately reconsider such order. If such order is not rescinded, the city council shall submit the same to a vote of the registered voters of the city, either at the next regular city election, or at a special city election which may, in the discretion of the city council, be called for the purpose in the manner provided by law. If an order submitted as aforesaid be approved by a majority of the registered voters voting on the question, such order shall at once become effective; but if not so approved such order shall have no effect. If a petition relative to any such order is not filed within said period of twenty days, such order shall become effective upon the expiration of said period.

Added by St.1939, c. 108, § 1. Amended by St.1968, c. 28.

§ 8B. Cities and towns; right to replace lost funds deposited; liquidation or insolvency of depository bank

The treasurer of any city, if authorized by vote of the city council with the approval of the mayor, and the treasurer of any town if authorized by vote of the town may borrow from time to time such sums as may be necessary to replace funds of such city or town which have been lost or are unavailable as a result of the insolvency, failure or liquidation of a bank or other depository wherein its funds have been deposited. Any such treasurer may issue notes of such city or town payable in or within not more than eight years. Indebtedness incurred by a city or town under the provisions of this section shall be outside its limit of indebtedness as fixed by this chapter.

Any sums received by any such city or town paid out of the assets of said bank by way of dividend or distribution to depositors shall first be applied to the repayment of any notes issued under the authority of this section which remain unpaid at the time such sums are received, and any balance remaining shall be paid into the treasury of such city or town.

Added by St.1972, c. 565. Amended by St.1974, c. 40.

§ 8C. Cities and towns; acquisition of land for conservation or recreation purposes in anticipation of state or federal reimbursement of expense; temporary debt outside limit authorized

A city or town which has appropriated money for the acquisition of land, to be expended together with a sum or sums of money allotted by the commissioner of natural resources under section eleven of chapter one hundred and thirty-two A or by the United States or by both, may, if said city or town is required primarily to pay a portion of the expense of acquiring such land which is to be reimbursed by the commonwealth or the United States or both, incur debt outside its debt limit in the amount of such reimbursable expense and may issue notes therefor which shall be payable in or within two years from their dates; provided, that prior to the issuance of such notes such reimbursement has been agreed upon by the commonwealth or the United States or by both; and provided, further, that the proceeds of such reimbursement shall be applied to the payment of the notes without further appropriation, notwithstanding the provisions of section fifty-three. The provisions of chapter seventy-four of the acts of nineteen hundred and forty-five shall not apply to borrowing under this section.

Added by St.1973, c. 734.

§ 9. Districts; right to borrow money; purposes; amount

Districts may by a two thirds vote authorize the incurring of debt for purposes prescribed, and payable within the periods specified, by sections seven and eight, so far as they are authorized by law to make expenditures for the purposes mentioned therein, and the amounts of debt so incurred shall be limited to the amounts prescribed for towns by sections eight and ten; provided that debt of any such district incurred for any purpose mentioned in clause (3), (4), (4A), (5), (6), (7), or (7A) of section eight under any special act heretofore or hereafter enacted shall not be included in the amount of debt which is subject to the limit prescribed by said section eight for debt for such purposes. The limitation contained in the first paragraph of section seven shall be applicable to loans authorized by districts for purposes provided under section seven.

In the fiscal year of organization of a newly established district, whether established under general or special law, the borrowing capacity for purposes specified in section seven and limited in amount by section ten, and for purposes specified in section eight, shall be based on an amount determined by applying to the equalized valuation of the town in which the district is located the same ratio which the assessors' valuation of the taxable property of the district for that year bears to the assessors' valuation of the taxable property of the town for the same year. In the case of a newly established district which is located in two or more towns, said borrowing capacity shall be based on the total amount determined by applying to the equalized valuation of each of the towns in which any part of the district is located the same ratio which the assessors' valuation of the taxable property of the district in the respective towns for that year bears to the assessors' valuation of the taxable property of said town for the same year.
Amended by St.1941, c. 376; St.1946, c. 384, § 1; St.1947, c. 298, § 5; St.1950, c. 169; St.1967, c. 46, § 2; St.1968, c. 23, § 8; St.1969, c. 849, § 51.

Historical and Statutory Notes

St.1915, c. 85, § 1.
St.1918, c. 257, § 159.
St.1919, c. 5.
St.1920, c. 2.

§ 10. Debt limit

Except as otherwise provided by law, a city or town shall not authorize indebtedness to an amount exceeding 5 per cent of the equalized valuation of the city or town. A city or town may authorize indebtedness in excess of 5 per cent but not in excess of 10 per cent, of the aforesaid equalized valuation; provided, however, that the amount of indebtedness so authorized shall be subject to the approval of the members of the municipal finance oversight board, which approval may be given either before or after such authorization.

In determining the debt limit for Boston hereunder the provisions of chapter ninety-three of the acts of eighteen hundred and ninety-one and of section one of chapter one hundred and ninety-one of the acts of nineteen hundred and three shall apply.

The debt limit for a district shall be based on an amount determined by applying to the equalized valuation of the town the same ratio which the assessors' valuation of the taxable property of the district for the preceding fiscal year bears to the assessors' valuation of the taxable property of the town for the preceding fiscal year. In the case of the district which is located in two or more towns, said debt limit shall be based on the total amount determined by applying to the equalized valuation of each of the towns in which any part of the district is located the same ratio which the assessors' valuation of the taxable property of the district in the respective towns for the preceding fiscal year bears to the assessors' valuation of the taxable property of said town for the preceding fiscal year.

All authorized debts, except those expressly authorized by law to be incurred outside the debt limit, shall be reckoned in determining the limit of indebtedness under this section.
Amended by St.1936, c. 224, § 6; St.1939, c. 24, § 1; St.1946, c. 329; St.1950, c. 51; St.1952, c. 56; St.1959, c. 99; St.1967, c. 133; St.1968, c. 23, § 9; St.1969, c. 849, § 52 as amended by St.1971, c. 766, § 12; St.2003, c. 46, § 32, eff. July 31, 2003; St.2004, c. 149, § 99, eff. July 1, 2004.

Historical and Statutory Notes

St.1875, c. 209, § 6.
P.S.1882, c. 29, § 4.
St.1885, c. 312, § 2.
R.L.1902, c. 27, §§ 3, 4.
St.1913, c. 719, §§ 1, 6, 12.
St.1914, c. 143, § 3.
St.1928, c. 379, § 2.

§ 11. Debt retirement; provision for earlier payment

Cities, towns and districts may pay or provide for the payment of any debt at an earlier period than is required by this chapter or may appropriate money for the purchase and cancellation of outstanding

indebtedness, and shall not refund any debt except as provided in section seventeen; and cities, towns and districts may, for the purpose of reducing the whole debt for the redemption of which sinking funds have been established by cities or towns prior to May twenty-eighth, nineteen hundred and thirteen, and by districts prior to March twentieth, nineteen hundred and fifteen, or of reducing the amount to be raised by taxation for such funds, add to any such sinking fund the excess of any appropriation over the amount required for the purpose thereof, or add to such funds any sums derived from taxation or from other sources not required by law to be expended otherwise.

Amended by St.1936, c. 224, § 7.

Historical and Statutory Notes

St.1875, c. 209, § 8.
P.S.1882, c. 29, § 14.
St.1892, c. 245, § 7.
R.L.1902, c. 27, § 18.
St.1913, c. 719, §§ 1, 15.
St.1915, c. 85, § 6.

§ 12. Repealed, 1946, 358, Sec. 16

§§ 13, 13A. Repealed, 1971, 766, Sec. 11

§ 14. Liability for lawful debts

Nothing in this chapter shall exempt a city or town from its liability to pay debts contracted for purposes for which it may lawfully expend money.

Historical and Statutory Notes

St.1875, c. 209, § 10.
P.S.1882, c. 29, § 16.
R.L.1902, c. 27, § 20.

§ 15. Liability for legal debts contracted under special acts

Cities, towns and districts authorized by special acts to incur debt shall not be exempt from liability to pay debts contracted for the purposes for which they may lawfully expend money under such acts, notwithstanding that the amount of the annual payment and the period of the loan may not have been specified by the vote authorizing the debt to be incurred, and the officers authorized to issue bonds or notes therefor may issue and same, subject to the provisions and limitations of such acts, provided that in all other respects the requirements of law shall have been complied with; and the provisions of this section shall apply to any bonds or notes of a city, town or district issued under the authority of any special act heretofore or hereafter enacted.

Historical and Statutory Notes

St.1914, c. 740.

§ 16. Issuance of bonds, notes and certificates of indebtedness; procedure; form; contracts with banking or financial institutions

A city, town or district which has authorized a debt to be incurred within the limitations, as to amount and time of payment, prescribed by this chapter may issue therefor bonds or notes, or, in the case of a city, certificates of indebtedness, all of which shall be properly denominated on the face thereof, signed by its treasurer, and, if issued by a city, countersigned by its mayor, unless its charter otherwise provides, or, if issued by a town, by a majority of its selectmen, or, if issued by a district, by a majority of the prudential committee, if any, otherwise by a majority of the commissioners, and by any other officers, boards or commissioners of a city, town or district whose counter-signatures may be required by law, at such rate or rates of interest as may be deemed proper; and such city, town or district may, except as provided in section eighteen, sell such bonds, notes or certificates of indebtedness at not less than ninety-eight per cent of their face amount, at public or private sale, or may use the same in payment of such debts; provided, that if the amount of the annual payment and the period of the loan are not specified by the vote authorizing the debt to be incurred, the officers authorized to issue bonds or notes therefor may issue the same subject to the provisions and limitations of this chapter; provided, further, that unless it is otherwise specified in the vote authorizing the debt, such officers may, subject to said limitations and provisions issue such bonds or notes at one time or from time to time and each such issue shall constitute a separate loan. Any bonds or notes issued under the authority of this chapter, if properly executed by the officers of a city, town or district in office on the date such securities are actually executed, shall be valid and binding according to their terms notwithstanding that before the delivery thereof and payment therefor any or all such officers shall have for any reason ceased to hold office. The auditor or similar officer in cities, the town accountant in towns having such an officer, the treasurer in all other towns, or the prudential committee, if any, otherwise the commissioners in a district, shall, not later than May first of each year, notify the board of assessors in writing of the amount of debt falling due during the next finan-

cial year, the sinking fund requirements, if any, and what provision has been made for meeting such requirements; and the board shall make such provision for meeting said debt and sinking fund requirements in the tax levy of that year as in its judgment may be necessary.

Notwithstanding any contrary provision of any general or special law, bonds, notes and certificates of indebtedness for different purposes and under different authorizations, whether or not subject to any debt limit, may be consolidated and issued at the same time; and, if they bear on their face the words "Municipal Purpose Loan of ____" followed by the year of issue in figures, they need not bear any title otherwise required but shall be conclusively presumed to be properly denominated on their face. The treasurer of the city, town or district shall maintain records showing the portion of each consolidated issue, and of each maturity thereof, allocable to each authorization and subject to any applicable debt limit and shall forward a copy of such records to the director of the bureau of accounts within thirty days of the sale of the bonds, notes or certificates of indebtedness. Each such portion of the issue shall comply with the maturity requirements applicable thereto.

Except as otherwise provided by law or by the vote authorizing the debt, the officers authorized to issue bonds or notes of a city, town or district shall determine the form and details of the bonds or notes, and may provide for a system of registration and exchange or transfer of registered bonds or notes. Any bonds or notes issued in exchange for bonds or notes originally issued in registered form shall be signed by the officers authorized to sign the original bonds or notes, and the provisions of section four of chapter one hundred and seven shall not apply to any such exchange.

In connection with the issuance by a city, town or district of original or replacement bonds or notes in registered form, the treasurer of the city, town or district, with the approval of the other officer or officers authorized to sign such bonds or notes, is authorized to contract for and engage the services of any banks, trust companies, or other banking or financial institutions within or without the state to perform authentication, registration, transfer, exchange, record and paying agent functions, including without limitation the preparation, signing and issuance of checks in payment of such bonds or notes, the preparation and maintenance of records, reports and accounts and the performance of such related duties as may be necessary or desirable in connection with such bonds or notes. The treasurer, with such approval, may also enter into agreements with banks, trust companies, or other banking or financial institutions to act as custodian or financial intermediary in connection with the establishment and maintenance by others of a central depository system for the transfer of interests in such bonds or notes. Any agreement entered into under this section shall include provisions for indemnifying the city, town or district for losses sustained by it on account of the negligence of a designated bank, trust company, or other banking or financial institution or on account of the failure of such designated bank, trust company, or other banking or financial institution to perform faithfully its duties and obligations under the agreement. Such agreement may include additional provisions necessary or desirable to protect the city, town or district and may provide for the limitation of liabilities of the parties, indemnification or payment of liquidated damages.

Amended by St.1936, c. 224, § 10; St.1956, c. 98; St.1964, c. 27; St.1969, c. 849, § 54; St.1970, c. 64, § 1; St.1970, c. 132; St.1984, c. 400, § 1; St.1986, c. 20; St.1986, c. 406.

Historical and Statutory Notes

St.1884, c. 129.
St.1896, c. 269.
R.L.1902, c. 27, § 9.
St.1913, c. 719, §§ 1, 8.
St.1914, c. 143, § 4.
St.1915, c. 85, § 3.

§ 16A. Facsimile signature

Any officer authorized to sign bonds or notes of a city, town or district may execute such bonds or notes or cause them to be executed by a facsimile signature in lieu of his manual signature, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed. In the case of registered bonds issued in exchange for or in replacement of prior bonds, no manually subscribed signature of an authorized officer shall be required if the signature of an authorized signer of a bank, trust company, or other banking or financial institution acting as trustee, authenticating agent, transfer agent or similar agent is manually subscribed. The facsimile signature of an authorized officer on a bond or note shall have the same legal effect as his manual signature.

Added by St.1957, c. 58, § 1. Amended by St.1984, c. 400, § 2.

§ 16B. Facsimile seal; validity

The engraved or printed facsimile of a city, town or district seal on a bond, note or certificate of indebtedness of such municipality shall have the same legal effect as though such seal were impressed thereon.

Added by St.1962, c. 232, § 2.

§ 16C. Repealed, 1984, 400, Sec. 3

§ 17. Temporary loans; refund; repayment

If a city, town or district votes to issue bonds, notes or certificates of indebtedness in accordance with law, the officers authorized to issue the same may, in the name of such city, town or district, make a temporary loan for a period of not more than two years in anticipation of the money to be derived from the sale of such bonds, notes or certificates, and may issue notes therefor. A city, town or district may refund, by the issue of other notes, a temporary loan issued under the authority of the first sentence; provided, however, that the period from the date of issue of the original loan to the date of maturity of the refunding loan shall not exceed two years, unless such temporary loan is paid in part from revenue funds of the city, town or district as hereinafter provided for, in which case the period from the date of issue of the original loan to the date of maturity of the refunding loan shall not exceed five years. A temporary loan refunded under this section shall be paid in part from revenue funds of the city, town or district at or before the maturity date of any such refunding loan that is issued to mature more than two years, but not more than three years, from the date of issue of the original loan. A like payment from revenue funds shall be made at or before the maturity date of any such refunding loan that is issued to mature more than three years, but not more than four years, from the date of issue of the original loan and again at or before the maturity date of any such refunding loan that is issued to mature more than four years from the date of issue of the original loan. Each such payment from revenue funds shall be at least equal to the minimum annual payment which would have been required if such temporary loan had been converted to a serial loan prior to its first refunding that required a payment from revenue funds under this section, and the authorized amount of the serial loan shall be reduced by the aggregate amount of all such payments. Each payment made by a city, town or district as provided in the preceding sentence shall be reported by the auditor or accountant of the city or town or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the determination of the next annual tax rate, unless the city, town or district has otherwise made provision therefor. The amount of a payment from revenue funds made by a regional school district or regional refuse disposal district as provided herein shall be included in the next annual district operating and maintenance budget, unless the regional district committee has otherwise made provision therefor. The time within which a serial loan shall be due and payable shall not be extended by reason of the making of a temporary loan hereunder beyond the time fixed by law. If a balance remains in the proceeds of a temporary loan issued in anticipation of a serial loan at the time when the serial loan is issued, said balance may be applied to the payment of such temporary loan.

Notes issued under sections four, six and six A for a shorter period than is permitted by said sections may be refunded by the issue of other notes within the required period; provided, however, that the period from the date of issue of the original loan to the date of maturity of the refunding loan shall be not more than the statutory authorization; and provided, further, that no notes shall be refunded under this section except under authority of such vote, if any, as is required for the original borrowing.

Amended by St.1946, c. 358, § 18; St.1962, c. 607, § 3; St.1963, c. 80; St.1983, c. 578, § 2; St.1992, c. 143, § 2.

Historical and Statutory Notes

St.1875, c. 209, § 8.
P.S.1882, c. 29, § 14.
St.1898, c. 526.
R.L.1902, c. 27, §§ 10, 18.
St.1908, c. 250, § 1.
St.1913, c. 719, §§ 1, 9.
St.1914, c. 143, § 5.
St.1923, c. 303, § 2.

§ 17A. Repealed, 1992, 143, Sec. 3

§ 18. Discount of notes

Notes issued under section four, five, five A, five B, six, six A or seventeen may be sold at such discount as the treasurer or other officer authorized to sell the same may, with the approval of the officer or officers whose counter-signature is required on said notes, deem proper, the discount to be treated as interest paid in advance.

Amended by St.1946, c. 358, § 19.

Historical and Statutory Notes

St.1904, c. 153.
St.1913, c. 719, §§ 1, 10.
St.1923, c. 303, § 3.

§ 19. Issuance of notes payable on demand forbidden; procedure for repaying debts

Cities, towns and districts shall not issue any notes payable on demand, but shall provide for the payment of all debts, except temporary loans incurred under sections 4, 6, 6A, 8C, and 17 or under section 3 of chapter 74 of the acts of 1945, by annual payments that will extinguish the same at maturity, and so that the first of these annual payments on account of any serial loan shall be made not later than the end of the next complete fiscal year commencing after the date of the bonds or notes issued for the serial loan, and shall be arranged so that for each issue the amounts payable in the several years for principal and interest combined shall be as nearly equal as practicable in the opinion of the officers authorized to issue the bonds or notes or, in the alternative, in accordance with a schedule providing a more rapid amortization of principal; and these annual amounts, together with the interest on all debts, shall, without further vote, be assessed until the debt is extinguished.

Amended by St.1946, c. 358, § 20; St.1981, c. 439; St.1987, c. 59; St.1989, c. 594, § 4; St.1990, c. 175, § 1; St.1996, c. 419; St.2010, c. 188, § 34, eff. July 27, 2010.

Historical and Statutory Notes

St.1882, c. 133, § 1.
R.L.1902, c. 27, § 13.
St.1908, c. 341, § 1.
St.1911, c. 350.
St.1913, c. 719, §§ 1, 14.
St.1915, c. 85, § 5.
St.1916, c. 62, §§ 1, 2.
St.1923, c. 359, § 2.

§ 19A. Inability to pay interest or principal of bonds, notes or certificates of indebtedness; notice; certification to state treasurer; payment by state treasurer

If it appears to the treasurer of a city, town or district, including a regional school district, that the city, town or district is, or is likely to be, unable to pay in whole or in part the principal or interest, or both, on any of its bonds, notes or certificates of indebtedness when due, he shall forthwith notify the city manager, if any, otherwise the mayor in a city, the selectmen in a town, the town manager or town council in a municipality with a town council form of government, the regional district school committee in a regional school district, or the prudential committee or commissioners in another district, of the inability or likely inability. If the city manager, mayor, town manager, town council, selectmen, committee or commissioners, whether or not so notified, finds upon investigation that the payment cannot or is not likely to be made when due, he or they shall certify the inability or likely inability to the commissioner of revenue. Upon receipt of the certificate, the commissioner shall immediately investigate the circumstances and, if he finds that the city, town or district is, or in his opinion will be, unable to make the payment when due, he shall forthwith certify the inability, the amount of the due or overdue payment and the name of the paying agent for the bonds, notes or certificates of indebtedness to the state treasurer.

Not later than three days after receipt of the certification from the commissioner or one business day prior to the date on which the principal or interest, or both, becomes due, whichever is later, the state treasurer shall pay to the paying agent the amount of the due or overdue payment certified to him to the extent of the sums otherwise then payable and the sums estimated to become payable during the remainder of the fiscal year, from the treasury, to the city, town or district. If for any reason any portion of the certified sum has not been so paid to the paying agent at the close of the fiscal year, the state treasurer shall pay the same as soon as practicable in the next fiscal year to the extent of sums otherwise then payable, and sums estimated to become payable during that fiscal year, from the treasury, to the city, town or district.

The amounts so paid to the paying agent shall be in trust and shall be exempt from being levied upon, taken, sequestered or applied for any purpose other than paying principal or interest, or both, on bonds, notes or certificates of indebtedness of the city, town or district.

Any amounts paid by the state treasurer under the provisions of this section, together with all costs accruing to the commonwealth as a result of actions undertaken pursuant to this section, including administrative costs as well as loss of interest income, shall be charged against the amounts otherwise payable or becoming payable from the treasury to the city, town or district.

For purposes of this section, the sums otherwise payable from the treasury to a city or town shall be the remainder after any deduction authorized by section twenty A of chapter fifty-eight or section twenty of chapter fifty-nine. In estimating the

sums to become payable from the treasury to a city or town during the remainder of a fiscal year the state treasurer shall first deduct any amounts or estimated amounts not yet paid which, if not otherwise paid, would be deductible under section twenty A of chapter fifty-eight or section twenty of chapter fifty-nine during the remainder of the fiscal year.

Added by St.1981, c. 782, § 8.

§ 20. Proceeds from sale of bonds; restrictions on use; disposition of premiums

The proceeds of any sale of bonds or notes, except premiums and accrued interest, shall be used only for the purposes specified in the authorization of the loan, and may also be used for costs of preparing, issuing and marketing such bonds or notes, except as otherwise authorized by this section. If a balance remains after the completion of the project for which the loan was authorized, such balance may at any time be appropriated by a city, town or district for any purposes for which a loan may be incurred for an equal or longer period of time than that for which the original loan, including temporary debt, was issued. Any such balance not in excess of one thousand dollars may be appropriated for the payment of the principal of such loan. If a loan has been issued for a specified purpose but the project for which the loan was authorized has not been completed and no liability remains outstanding and unpaid on account thereof, a city by a two-thirds vote of all of the members of the city council, or a town or district, by a two-thirds vote of the voters present and voting thereon at an annual town or district meeting, may vote to abandon or discontinue the project and the unexpended proceeds of the loan may thereupon be appropriated for any purpose for which a loan may be authorized for an equal or longer period of time than that for which the original loan, including temporary debt, was issued. Any premium received upon such bonds or notes, less the cost of preparing, issuing and marketing them, and any accrued interest received upon the delivery of said bonds or notes shall be paid to the city, town or district treasury. Notwithstanding the provisions of this section, no appropriation from a loan or balance thereof shall be made which would increase the amount available from borrowed money for any purpose to an amount in excess of any limit imposed by general law or special act for such purpose. Effective with the fiscal year 2005 tax rate approval process, additions to the levy limit for a debt exclusion are restricted to the true interest cost incurred to finance the excluded project. Premiums received at the time of sale shall be offset against the stated interest cost in computing the debt exclusion. The provisions of the preceding 2 sentences shall not apply to bond premiums received on or before July 31, 2003.

Amended by St.1946, c. 358, § 21; St.1947, c. 60; St.1949, c. 403; St.1966, c. 61; St.1979, c. 191; St.1992, c. 133, § 374; St.2003, c. 46, § 33, eff. July 31, 2003; St.2006, c. 122, § 18, eff. July 27, 2006.

Historical and Statutory Notes

St.1910, c. 379, §§ 1, 3.
St.1913, c. 719, §§ 1, 7.
St.1915, c. 85, § 2.
St.1928, c. 224.

§ 20A. Advances made in anticipation of proceeds

Cities, towns and districts that have duly authorized the issuance of serial bonds, notes or certificates of indebtedness may make expenditures for the purposes for which such serial bonds, notes or certificates of indebtedness were authorized from any available revenue funds in advance and in anticipation of such issuance. Cities, towns and districts that have been allotted a grant by the commonwealth or the federal government may make expenditures for the purposes of such grant from any available revenue funds in advance and in anticipation of receipt of reimbursements from such grant, to such maximum amount and subject to such limitations as may be provided in the rules, regulations and guidelines promulgated by the director. For purposes of this section, available revenue funds shall not include revenue cash the use of which is restricted to purposes other than current maintenance expenses. Such advances shall be made by the treasurer with the approval of the officer or officers authorized to issue the bonds or notes. Prior to making any such advance, the treasurer shall determine that the issuance of such serial bonds, notes or certificates of indebtedness has been duly authorized in accordance with law. Such cities, towns or districts shall reimburse the account or accounts from which the advance was made from the proceeds of bonds, notes, including notes in anticipation of the serial loan, or certificates of indebtedness issued during the fiscal year in which the advance was made. Advances made under authority of this section shall be subject to rules, regulations or guidelines promulgated by the director.

Added by St.1992, c. 143, § 4.

§ 21. Call and redemption prior to maturity

An officer of a city, town or district authorized to issue bonds or notes may provide that the bonds or notes of any issue may be called and redeemed, in whole or in part, prior to their maturity dates, at such price and under such terms and conditions as said officer may determine. No such bonds or notes shall be called and redeemed before their maturity dates unless funds, sufficient to pay the principal thereof, any redemption premium thereon and all interest accrued to the date fixed for redemption have been appropriated by the city, town or district and are then available; or, unless the city council of the city, the board of selectmen of the town or the prudential committee, if any, otherwise the commissioners of the district, shall have provided for issuance of refunding bonds or notes as provided in section twenty-one A.

Amended by St.1946, c. 358, § 22; St.1980, c. 521; St.1980, c. 578, § 38; St.1982, c. 23.

Historical and Statutory Notes

St.1876, c. 238, § 4.
P.S.1882, c. 29, § 23.
R.L.1902, c. 27, § 25.

§ 21A. Refunding bonds; issuance; present values

The city council of a city, the board of selectmen of a town, the school committee of a regional school district and the prudential committee, if any, otherwise, the commissioners of a district may provide for the issuance of refunding bonds or notes of the city, town, regional school district or district for the purpose of paying or refunding all or any designated part of an issue of bonds or notes then outstanding, including the amount of any redemption premium thereon; provided, however, that no such refunding bonds shall be payable over a period longer than the period during which the original bonds or notes so refunded shall be paid pursuant to law. The first annual payment of principal on account of an issue of refunding bonds or notes shall not be later than the earliest stated principal maturity date of any of the bonds or notes being refunded and the annual payments thereafter shall be arranged in accordance with the provisions of section nineteen; provided, however, that any annual payment earlier than the date on which the first annual payment is required to be made, may be in any amount. Except as otherwise provided in this section, the issuance of such refunding bonds or notes shall be governed by the applicable provisions of this chapter. Refunding bonds or notes issued under this section shall be subject to the same limit of indebtedness, if any, as the bonds or notes refunded by them; provided, however, that upon the issuance of such refunding bonds or notes, the bonds or notes refunded shall no longer be counted in determining any limit of indebtedness of the city, town or district under this chapter or any other applicable provision of law. If such refunding bonds or notes are issued prior to the maturity or redemption date of the original bonds or notes refunded, an amount of the proceeds of the refunding bonds or notes and other moneys then available or to become available to the city, town or district, which moneys may include income to be derived from the investment of such proceeds, sufficient to pay or provide for the payment of the principal, redemption premium, if any, and interest on the bonds or notes so refunded to the date fixed for their payment or redemption shall be held in a separate fund and in trust solely for the payment of such principal, redemption premium and interest. The funds so held may be invested pursuant to section fifty-five and the income derived from such investment may be expended by the treasurer to pay the principal, redemption premium, if any, and interest on the bonds or notes refunded until they are paid or redeemed; provided, however, that notwithstanding any limitations on the maturity of investments under section fifty-five, any such investment may have a maturity not later than the date fixed for the payment or redemption of the bonds or notes refunded.

The present value of the principal and interest payments due on refunding bonds issued under this section shall not exceed the present value of the principal and interest payments to be paid on the bonds to be refunded. The city, town, or regional school district shall notify the department of education in the event that bonds or notes issued for an approved school project under chapter six hundred and forty-five of the acts of nineteen hundred and forty-eight are refunded under this section and the amount of the state construction grant payable to the city, town, or regional school district shall not be affected by any increase in the amount of interest payable on the refunding bonds or notes, but shall be affected by any decrease in the amount of interest payable on the refunding bonds or notes for school building projects approved after July first, nineteen hundred and ninety-five. Upon receipt of notification from a city, town or regional school district of a decrease in the amount of

interest payable related to such projects, the department of education shall recalculate the amount of the state construction grant that is payable to such city, town or regional school district.

Added by St.1980, c. 521. Amended by St.1985, c. 488; St.1987, c. 585, § 1; St.1990, c. 175, § 2; St.1995, c. 38, § 61; St.1998, c. 194, § 114; St.2003, c. 46, § 34, eff. July 31, 2003.

§ 21B. Designation of tax credit bonds; sinking fund; sale of tax credit bonds; issuance of refunding bonds

The city council of a city, and in the case of a city having a city manager and in the case of other cities, with the approval of the mayor the board of selectmen of a town, the school committee of a regional school district and the prudential committee, if any, otherwise, the commissioners of a district may designate any duly authorized issue of bonds or notes as tax credit bonds to the extent that any such bonds or notes are otherwise permitted to be issued in the form of bonds or notes with federal tax credits or other similar subsidies for all or any portion of their borrowing costs. Any borrowing designated as tax credit bonds may be payable without regard to any limitation as to amounts of annual installments for bonds provided in any other law.

Notwithstanding section 47 or any other general or special law to the contrary, the city council of a city, and in the case of a city having a city manager and in the case of other cities with the approval of the mayor the board of selectmen of a town, the school committee of a regional school district and the prudential committee, if any, otherwise, the commissioners of a district may establish a separate sinking fund to be held in trust solely for the payment of principal, redemption premium and interest on any tax credit bonds. Amounts held in any such sinking fund may be invested pursuant to section 55 and the income derived from such investment may be expended by the treasurer to pay the principal, redemption premium, if any, and interest on such tax credit bonds until they are paid or otherwise redeemed; provided, however, that notwithstanding the limitations on the maturity of investments under said section 55, any such investment may have a maturity not later than the date fixed for the payment or redemption of such tax credit bonds. Any earnings on proceeds of tax credit bonds may be applied to pay costs of any project for which the city, town or district is authorized to incur debt for a period of 5 years or more, or to the redemption of tax credit bonds from which such proceeds were derived, and may not be applied or appropriated for any other purpose.

Tax credit bonds may be sold at par, premium or discount, without regard to any limitation on the amount of any discount contained in any other general or special law, and may be sold as instruments the principal amount of which either remains constant or increases during the life of the instrument. When tax credit bonds are issued the amount issued shall be deemed to be the net proceeds of the issue; provided that the officers charged with the issuance of such tax credit bonds may apply all or a portion of any premium received on the sale of any such tax credit bonds, without appropriation, to the costs of issuance thereof, in which case the amount of any premium so applied shall not be included in the amount of the issue.

The city council of a city, and in the case of a city having a city manager and in the case of other cities with the approval of the mayor the board of selectmen of a town, the school committee of a regional school district and the prudential committee, if any, otherwise the commissioners of a district may provide for the issuance of refunding bonds or notes of the city, town, regional school district or district for the purpose of paying or refunding all or any designated part of an issue of tax credit bonds, other than tax credit bonds issued in accordance with section 54AA(g) of the Internal Revenue Code, without regard to the present value savings requirements set forth in section 21A. Except as provided herein, the issuance of refunding bonds for the purpose of paying or refunding tax credit bonds shall be governed by the provisions of said section 21A. Notwithstanding any general or special law to the contrary, any limitation amount that is allocated to any large local educational agency pursuant to, and as defined in, section 54F(d)(2) of the Internal Revenue Code of 1986 and that remains unused by such large local educational agency as of the end of any calendar year is hereby deemed reallocated to the commonwealth and, effective January 1 of the following calendar year, further reallocated by the commonwealth to such large local educational agency.

Added by St.2009, c. 120, § 13, eff. June 30, 2009.

§ 22. Rate of interest

All bonds, notes and other securities issued by cities or towns shall bear such rate or rates of

interest as may be fixed by the city or town treasurer, with the approval of the mayor or selectmen, notwithstanding any general or special provision of law enacted prior to April twenty-second, nineteen hundred and twenty.

Amended by St.1936, c. 224, § 9; St.1970, c. 64, § 2.

Historical and Statutory Notes

St.1920, c. 336.

§ 22A. Insurance, letters or lines of credit for bonds or notes; trust agreements

Bonds or notes issued by a city may be secured in whole or in part by insurance or by letters or lines of credit or other credit facilities upon a two-thirds vote of the city council with the approval of the mayor. Any such insurance, letter or line of credit or credit facility may provide for reimbursement to be made over such period of time, not to exceed two years beyond the maturity date of the bonds or notes so secured, as the treasurer, with the approval of the mayor, shall deem proper and may provide for reimbursement to be made, and any such notes or bonds may be issued, at such rate or rates of interest as the treasurer, with the approval of the mayor, shall deem proper, including rates variable from time to time as determined by such index, banker's loan rate or other method as may be specified in such agreement or such bond or note. Notwithstanding any contrary provision of law, bonds or notes secured as described in this section may, in the discretion of the treasurer, with the approval of the mayor, be subject to prepayment at the option of the holder thereof at such times and prices and under such circumstances as the treasurer and the mayor shall specify. For the purpose of securing bonds and notes a city, acting by its treasurer, upon a two-thirds vote of all the city council, with the approval of the mayor, may enter into a trust agreement between the city and a corporate trustee which shall be a bank or trust company doing business in the commonwealth. Any such trust agreement, and any remarketing or other agreements necessary or incidental to the issuance of such bonds or notes, shall be in such form as may be deemed proper by the treasurer of such city, with the approval of its mayor, and shall be executed by its treasurer and countersigned by its mayor. It shall be lawful for any bank or trust company doing business in the commonwealth to act as a depository or trustee under any such trust agreement and to furnish such indemnification and pledge such securities as may be required by any such city. Any trustee under a trust agreement established pursuant to this section may bring suit upon the bonds or notes and may, either at law or equity, by suit, action, mandamus or other proceedings for legal or equitable relief, enforce all rights under the laws of the commonwealth or granted hereunder or under such trust agreement, and may enforce and compel the performance of all duties required under such trust agreement to be performed by the city or by any officer thereof. In a city with a plan D or plan E form of government, the powers granted in this section to the mayor shall be exercised by the city manager. The provisions of this section shall not apply to towns. All expenses incurred in carrying out the provisions of this section may be treated by the city as a cost of issuance.

Added by St.1985, c. 571, § 1.

§ 22B. Bonds and notes; official statements; advertising; collateral tax consequences to social security recipients

Any official statement prepared in connection with the sale of any bonds or notes of a city, town or district and all advertising of such bonds and notes, the interest on which is excludable from gross income for federal income tax purposes under the provisions of section 103 of the Internal Revenue Code (26 USC 103), shall include a reference to the collateral tax consequences which may result under section 86 of said Code (26 USC 86) to the holders of such bonds or notes who are recipients of social security benefits.

Added by St.1989, c. 375, § 2.

§ 22C. Security for bonds or notes; insurance, letters or lines of credit, trust agreements

Bonds or notes issued by a town or district may be secured in whole or in part by insurance or by letters or lines of credit or other credit facilities upon a two-thirds vote of the board of selectmen of the town or a two-thirds vote of the prudential committee, if any, otherwise the board or commissioners of the district. Any such insurance, letter or line of credit or credit facility may provide for reimbursement to be made over such period of time, not to exceed two years beyond the maturity date of the bonds or notes so secured, as the officers authorized to issue the bonds or notes shall deem proper and may provide for interest on such reimbursement to be paid at such rate or rates of interest as the officers authorized to issue the bonds or notes shall deem proper, including rates

variable from time to time as determined by such index, banker's loan rate or other method as may be specified therein. For the purpose of securing its bonds or notes, a town or district, acting by its treasurer, upon a two-thirds vote of the board of selectmen of the town, or a two-thirds vote of the prudential committee, if any, otherwise the board or commissioners of the district may enter into a trust agreement between the town or district and a corporate trustee which shall be a bank or trust company doing business in the commonwealth. Any such trust agreement, and any other agreements necessary or incidental to the issuance of such bonds or notes, shall be in such form as may be deemed proper by the officers authorized to issue the bonds or notes, and shall be executed by such officers. It shall be lawful for any bank or trust company doing business in the commonwealth to act as a depository or trustee under any such trust agreement and to furnish such indemnification and pledge such securities as may be required by the town or district. Any trustee under a trust agreement established pursuant to this section may bring suit upon the bonds or notes and may, either at law or equity, by suit, action, mandamus or other proceedings for legal or equitable relief, enforce all rights under the laws of the commonwealth or granted hereunder or under such trust agreement, and may enforce and compel the performance of all duties required under such trust agreement to be performed by the town or district or by any officer thereof. All expenses incurred in carrying out the provisions of this section may be treated by the town or district as a cost of preparing, issuing and marketing its bonds or notes.

Added by St.1992, c. 143, § 5.

§ 23. Forms for notes

The director shall furnish to the treasurer of every city, town and district, forms for the issue of notes for money borrowed by the city, town or district. Every such note shall contain blanks for insertion of the amount thereof, the date of issue, which shall be construed as the date from which interest is payable, the interest which it bears, the date when it will become due, and such other matters as the director may deem necessary; and a record of every such note shall be kept by said treasurer in such form as the director may designate. The director may place upon notes submitted to him for certification such denominations as will show the purpose for which they are issued and as may be required by law to appear thereon.

Amended by St.1967, c. 46, § 3; St.1991, c. 544, § 1.

Historical and Statutory Notes

St.1910, c. 616, § 1.
St.1913, c. 727, § 1.
St.1915, c. 285.
St.1918, c. 257, § 159.
St.1919, c. 5.
St.1919, c. 350, §§ 52, 55.
St.1920, c. 2.

§ 24. Authentication; certification

When a city, town or district votes to borrow money otherwise than by the issue of bonds, the treasurer thereof may make notes for the amount of the proposed loan, and may use one or more, in serial order, of the forms provided for in section twenty-three, with the blank spaces properly filled in. Notes issued hereunder shall be signed and countersigned as provided in section sixteen or other applicable provisions of law in the presence of the clerk of the city, town or district, who shall certify to the fact on the face thereof. The treasurer of the city, town or district, after making a record of the transaction in accordance with section twenty-three, shall forward, with the fee required by section twenty-six, every such note to the director, with a copy of said record and a copy of the order or vote authorizing the loan, certified by the clerk of the city, town or district, and a certification by said clerk that the person whose signature appears upon the note as treasurer was the duly authorized treasurer of the city, town or district when such signature was made, and that the persons whose countersignatures appear upon the note were duly qualified as such when such countersignatures were made; and the treasurer of such city, town or district shall furnish such other information as the director may require to enable the director properly to certify the note. If upon examination the note appears to the director to have been duly issued in accordance with law and the vote of the city, town, or district authorizing it, or in accordance with an act of the general court, and to have been signed by the duly qualified officials of such city, town or district, he shall so certify and shall thereupon return the note by registered mail to the treasurer of such city, town or district or shall deliver it in hand to such treasurer or to his duly authorized agent; but, under such regulations as he may prescribe, if so authorized by the signers of the note, the director may deliver a certified note to the payee thereof or deliver it to a bank or trust

company to be credited to the account of such city, town or district. He may certify to the issue of a note on any date not earlier than five days prior to the date of issue appearing on the note, if the other conditions of this chapter have been complied with. He shall not certify a note payable on demand, nor shall he certify any note unless the laws relating to municipal indebtedness have been complied with, or if it appears that the proceeds of the note are not to be used for the purpose specified in the vote authorizing the loan for which the note is issued. The director may use a facsimile signature machine or stamp for the purpose of certifying notes under this section and such facsimile shall have the same legal effect as the director's manual signature.
Amended by St.1963, c. 85; St.1967, c. 46, § 4; St.1991, c. 544, § 1.

Historical and Statutory Notes

St.1910, c. 616, § 2.
St.1912, c. 45, § 1.
St.1913, c. 416, § 1.
St.1913, c. 727, §§ 2, 3.
St.1914, c. 55, §§ 1, 2.
St.1918, c. 257, § 159.
St.1919, c. 5.
St.1920, c. 2.
St.1929, c. 28.

§ 24A. Bearer instruments

City, town and district notes may be made payable to "bearer", and when so issued section twenty-four may be construed by the director as being properly complied with in so far as it relates to the proper filling in of any space provided for the name of the purchaser or registered holder of the loan, and the director may certify such notes; provided that before certification there shall be filed with the director by the city, town or district treasurer, as the case may be, the name of the purchaser of such loan.
Amended by St.1991, c. 544, § 1.

Historical and Statutory Notes

St.1921, c. 294.

§ 25. Payments; notice to director of accounts

Whenever a note issued by a city, town or district is paid, the treasurer thereof shall immediately notify the director of such payment, stating the source from which such payment was made.
Amended by St.1991, c. 544, § 1.

Historical and Statutory Notes

St.1910, c. 616, § 3.
St.1913, c. 727, § 5.
St.1918, c. 257, § 159.
St.1919, c. 5.
St.1920, c. 2.

§ 26. Repealed, 2010, 188, Sec. 35

§ 27. Certification; evidence of liability

The certification of city, town or district notes by the director shall be prima facie evidence of the liability of such city, town or district therefor.
Amended by St.1991, c. 544, § 1.

Historical and Statutory Notes

St.1915, c. 84, § 1.

§ 27A. Effect of provisions on power to issue notes

The provisions of sections twenty-three to twenty-seven, inclusive, shall be deemed to provide an additional and alternative means of carrying out the purposes thereof and shall not effect the power of cities, towns and districts to issue notes under and subject to other provisions of law.
Added by St.1983, c. 473, § 2. Amended by St.1991, c. 544, § 1.

§ 28. Report to director of accounts required

Whenever a city, town or district votes to authorize the incurrence of indebtedness, the city, town or district clerk, as the case may be, shall, within forty-eight hours after the vote becomes effective, furnish to the director a copy thereof; and whenever a loan is issued by a city, the city treasurer shall notify the director of the amount and purpose of the loan, and shall state whether it be in the form of bonds or notes; and whenever a loan is issued by a town or district in the form of bonds, the treasurer thereof shall notify the director of the amount and purpose thereof. City, town and district treasurers shall also furnish the director, upon request, with any other information in respect to the authorization and issue of loans, which he may require to enable him to keep a complete and accurate record of indebtedness authorized or incurred by cities, towns and districts.

Historical and Statutory Notes

St.1919, c. 23.

§ 28A. Applicability of finance law to school districts

The provisions of sections sixteen to twenty-eight, inclusive, shall, so far as apt, apply to regional school districts established under the provisions of section fifteen of chapter seventy-one, but the

provisions of section sixteen relating to the countersigning of bonds and notes and the provisions of section twenty-four relating to the countersigning and approval of notes and the certificates of the clerk relating thereto shall not apply to such districts.

Added by St.1951, c. 16. Amended by St.1957, c. 262, § 1.

§ 28B. Applicability of finance law to planning districts

The provisions of sections sixteen to twenty-eight, inclusive, shall, so far as apt, apply to planning districts established under the provisions of chapter forty B, but the provisions of section sixteen relating to the countersigning of notes by a majority of the commission and the provisions of section twenty-four relating to the countersigning and approval of notes by a majority of the commission shall not apply to such districts.

Added by St.1967, c. 173, § 2.

§ 28C. Management of solid waste; project costs; debt obligations

(a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Chief executive officer", the manager in any city having a manager and in any town having a city form of government, the mayor in any other city, and the board of selectmen in any other town unless some other officer or body is designated to perform the functions of a chief executive officer under the provisions of a local charter or laws having the force of a charter.

"Costs", when used in reference to any work or purpose for which a city or town is authorized to issue debt obligations under this section, means all or any part of the cost of planning, designing, acquiring, constructing, reconstructing, altering, remodeling and otherwise carrying out such work or purpose including, without limitation, costs of labor, materials, machinery and equipment, lands, structures and all rights of any kind in real and personal property, costs of demolitions and relocations, cost of issuance and other financing charges and expenses, reserves for debt service and other capital and current expenses, costs of architectural, engineering, financial, legal and consulting services, costs of plans, specifications, appraisals, surveys, inspections, financial and feasibility studies, and any other costs or expenses authorized herein or necessary or incidental to the planning, acquisition, construction, financing or placing in operation of such work or purpose; the word "cost" shall also include interest prior to, during and for a reasonable period of time after completion of such work or purpose.

"Cost of issuance", any items of expense payable or reimbursable directly or indirectly by a city or town and related to the sale and issuance of debt obligations under this section and the investment of the proceeds therefor and of revenues securing the same, including without limitation printing costs, filing and recording fees, fees and charges of trustees, depositories, authenticating agents and paying agents, legal and auditing fees and charges, financial consultant fees, costs of credit ratings, premiums for insurance of the payment of debt obligations and fees payable for letters or lines of credit or other credit facilities securing debt obligations, discount payable upon the sale of debt obligations, fees and charges for execution, transportation and safekeeping of debt obligations, costs and expenses of refunding and other costs, fees and charges in connection with the foregoing.

"Debt obligation", a bond, a note, a certificate of indebtedness, and any other instrument or evidence of indebtedness, including a debt obligation issued to refund any of the foregoing.

(b) Any city or town is hereby authorized pursuant to a two-thirds vote, from time to time to issue its debt obligations pursuant to this section to pay project costs of (1) cleaning up or preventing pollution caused by existing or closed landfills or other solid waste disposal facilities including clean up or prevention activities taken pursuant to chapter twenty-one E or chapter twenty-one H; (2) constructing incinerators, refuse transfer facilities, recycling facilities, composting facilities, resource recovery facilities or other solid waste disposal facilities, for the purpose of disposing of waste, refuse and garbage; (3) remodeling, reconstructing or making extraordinary repairs to incinerators, refuse transfer facilities, recycling facilities, resource recovery facilities or other solid waste disposal facilities, owned by the city or town and used for the purpose of disposing of waste, refuse and garbage; and (4) closing out a landfill area, opening a new landfill area, or making improvements to an existing landfill area. No indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to the department of environmental protection and the approval of said department has been granted therefor.

If a city or town has authorized the issuance of debt obligations in accordance with this section, the treasurer, with the approval of the chief executive officer, may without further authority issue notes in anticipation of such debt obligations, which notes may be paid with the proceeds of such debt obligations. The maturity date of any such notes shall not exceed three years from the date of issue of such notes or six months after the date of completion of the project being financed with such debt obligations, as determined by the chief executive officer, whichever date is later; provided, however, that notes issued to mature earlier than such date may be refunded on other notes maturing no later than three years from the date of issue of the original loan or six months after the completion date of the facility, whichever date is later. Subject to the limitations set forth in this paragraph, the provisions of this section applicable to debt obligations shall also apply to notes issued in anticipation thereof.

The useful life of a project to clean up or prevent pollution caused by existing or closed landfills or other solid waste facilities shall be deemed to be thirty years. The debt obligations may be made redeemable before maturity at the option of the city or town, acting by and through its chief executive officer, or when authorized by a two-thirds vote prior to issuance at the option of the holder of such debt obligations, at such price or prices, with or without premium, and under such terms and conditions as such officer may determine prior to the issue of such debt obligations. Debt obligations may be issued as serial debt obligations or as term debt obligations or as a combination of both, and in coupon or registered form, or both. Provision may be made for the registration of any coupon debt obligations as to principal alone, and also as to both principal and interest, and for the reconversion into coupon debt obligations of any debt obligations registered as to both principal and interest and for the interchange of registered and coupon debt obligations. The treasurer, with the approval of the chief executive officer, shall determine the form of the debt obligations, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the debt obligations and the place or places of payment of principal, premium, if any, and interest, which may be at any bank or trust company within or without the commonwealth.

Debt obligations issued hereunder shall be signed by the manual or facsimile signature of the treasurer and countersigned by the manual or facsimile signature of the treasurer and countersigned by the manual or facsimile signature of the chief executive officer and coupons, if any, appertaining to debt obligations shall bear the facsimile signature of the treasurer. Unless provision is made for the authentication of the debt obligations of an issue by the manual signature of trustee or other authenticating agent, each debt obligation shall bear at least one manual signature of the aforementioned officers. Debt obligations, other than notes, shall bear thereon the seal of the city or town or a facsimile thereof. In case any officer whose signature or a facsimile of whose signature shall appear on any debt obligations or coupons shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until after such delivery.

Debt obligations issued by a city or town pursuant to this section may be sold in such manner, either at public or private sale, and for such price or prices, whether at par, premium or discount, as the treasurer, with the approval of the chief executive officer, may determine.

Any debt obligations issued under authority of this section shall not be included in the debt of a city or town for the purpose of ascertaining its legal borrowing capacity.

(c) The chief executive officer of any city or town is hereby authorized and empowered in connection with any borrowing under this section to enter into one or more trust or security agreements between such city or town and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the commonwealth, or directly between such city or town and the lenders on the debt obligations, necessary to effectuate and to secure such borrowing. Such agreements may pledge or assign, and create a security interest in, in whole or in part, the revenues and other money held or to be received by the city or town from any project being financed or from any fees or charges imposed by such city or town relating to solid waste disposal and any contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the city or town and the proceeds thereof. Such agreements may contain such provisions for protecting and enforcing the rights, security and remedies of the holders of such debt obligations as may be reasonable and not in violation of law, including

without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event thereof, which may include the acceleration of maturities and covenants setting forth the duties of, and limitations on, the city or town in relation to the acquisition, construction, improvement, enlargement, alteration, equipping, furnishing, maintenance, use, operation, repair, insurance and disposition of the project being financed by such debt obligations, the custody, safeguarding, investment and application of money, the issuance of additional debt obligations, the fixing, revision and collection of fees or other charges relating to solid waste disposal, the use of any surplus proceeds of the borrowing, including any investment earnings thereon, the establishment of special funds and reserves and the making and amending of contracts relating to such project.

The pledge of any such agreement shall be valid and binding and shall be deemed continuously perfected for the purposes of chapter one hundred and six and any other law from the time when the pledge is made; the revenues, money, rights and proceeds so pledged and then held or thereafter acquired or received by a city or town shall immediately be subject to the lien of such pledge without any physical delivery or segregation thereof or further act; and the lien of any such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the city or town, irrespective of whether such parties have notice thereof. No document by which a pledge is created need be filed or recorded except in the records of a city or town and no filing need be made under the provisions of said chapter one hundred and six.

Any such trust agreement may provide that any money received thereunder may be deposited or invested, pending the disbursement thereof, in any deposits or investments which are lawful for the funds of cities or towns pursuant to section fifty-five of chapter forty-four, and shall provide that any officer with whom or any bank or trust company with which such money shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof and thereof, subject to such regulation or limitation as this section or such agreement may provide.

It shall be lawful for any bank or trust company to act as depository or trustee of the proceeds of debt obligations, revenues or other money pledged under any such agreement and to furnish such indemnifying bonds or to pledge such security and issue such letters or lines of credit or other credit facilities as may be required by the city or town. Any agreement entered into pursuant to this section may set forth the rights and remedies of the holders of any debt obligations and of the trustee and may restrict the individual right of action by any such holders. In addition to the foregoing, any such agreement may contain such other provisions as the city or town may deem reasonable and proper. All expenses incurred in carrying out the provisions of such agreement may be treated as a cost of issuance hereunder. In addition to other security provided herein or otherwise by law, debt obligations issued under this section by a city or town, may be secured, in whole or in part, by insurance or by letters or lines of credit or other credit facilities issued to the city or town by any bank, trust company or other financial institution, within or without the commonwealth, and the city or town may pledge or assign any of its revenues and other money held or to be received by the city or town from the project being financed or from any fees or charges imposed by such city or town relating to solid waste disposal as security for the reimbursement by the city or town to the issuers of such letters or lines of credit, insurance or credit facilities of any payments made thereunder.

Any holder of a debt obligation issued by a city or town under the provisions of this section or of any of the coupons appertaining thereto and any trustee under an agreement securing the same, except to the extent the rights herein given may be restricted by such agreement, may bring suit upon the debt obligations or coupons and may, either at law or in equity, by suit, action, mandamus, or other proceeding for legal or equitable relief, including proceedings for the appointment of a receiver to take possession and control of the facilities financed by such debt obligations to operate and maintain the same, to make any necessary repairs, renewals and replacements in respect thereof and to fix, revise and collect fees and charges, protect and enforce any and all rights under the laws of the commonwealth or granted hereunder or under such agreement or other agreement, and may enforce and compel the performance of all duties required by this section or by such agreements to be performed by the city or town or by any officer thereof.

A pledge of revenue in accordance with this section shall constitute a sufficient appropriation thereof for the purposes of any provision for appropriation for so long as such pledge shall be in effect

and, notwithstanding any other general or special law to the contrary, such revenues may be applied as required by the pledge and the agreement evidencing the same without further appropriation.

(d) In addition to authority otherwise granted by law, a city or town may, when authorized by a two-thirds vote, issue refunding debt obligations for the purpose of paying any of its debt obligations issued under this section prior to maturity or upon acceleration of redemption. Refunding debt obligations may be issued at such times prior to the maturity or redemption of the refunded debt obligations as the treasurer and chief executive officer deem to be in the best interest of the city or town. The refunding debt obligations may be issued in sufficient amounts to pay or provide for the principal of the debt obligations being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such debt obligations, the costs of issuance of the refunding debt obligations, the costs of redeeming the debt obligations being refunded and such reserves as may be required by any agreement securing the refunding debt obligations. The issue of refunding debt obligations, the maturity or maturities and other details thereof, the security therefor, and the rights of the holders thereof, and the rights, duties and obligations of the city or town in respect of the same shall be governed by the provisions of this section relating to the issue of debt obligations other than refunding debt obligations insofar as the same may be applicable; provided, however, that the refunding debt obligations shall be payable no later than the last date on which any portion of the debt obligations being refunded are payable or within the remaining useful life of the work or purpose financed by the refunded debt obligations, as determined by the chief executive officer, whichever is later. The provisions of section twenty-one A of chapter forty-four shall not apply to any such refunding debt obligations.

(e) Debt obligations issued under authority of this section are hereby made securities in which all insurance companies, trust companies, banking associations, savings banks, cooperative banks, investment companies, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or notes or other obligations of a similar nature may properly and legally invest funds, including capital deposits or other funds in their control or belonging to them. Such debt obligations are hereby made securities which may properly and legally be deposited with and received by any state or municipal office or any agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or other obligations of the commonwealth now or may hereafter be authorized by law.

Debt obligations issued under authority of this section, their transfer and the income therefrom, including any profit made on the sale thereof, shall be at all times free from taxation within the commonwealth whether or not any such debt obligation shall so provide on its face.

Debt obligations may be issued under this section as herein provided without the consent of any department, division, commission or agency of the commonwealth and without any other proceedings or the happening of any other conditions or things other than those consents, proceedings, conditions or things expressly required therefor herein and the validity of and security for any such debt obligations shall not be affected by the existence or nonexistence of any such consent or other proceedings, conditions or things.

(f) Any city or town acting by and through the officer or officers, board, committee or other body authorized by law, if any, to fix, revise, charge and collect such fees and other charges, otherwise, acting by and through its chief executive officer, is hereby authorized to fix, revise, charge and collect fees and other charges for any facilities or services provided by such city or town as relate to the collection or disposal of solid waste. If a city or town has issued debt obligations under this section, the fees and other charges established as aforesaid shall be fixed and adjusted during any period when such debt obligations are outstanding so as to provide revenues at least sufficient (i) to pay the current expenses of operating and maintaining such facilities and services, (ii) to pay the principal or, premium, if any, and interest on all debt obligations issued by the city or town under this section as the same become due and payable, (iii) to create and maintain such reserves as may be required by a resolution or agreement relating to the issuance of debt obligations hereunder, (iv) to provide funds for paying project costs and maintenance, repair, replacement and renewal costs related to any project financed with debt obligations issued hereunder and (v) to pay or provide for any and all amounts which the city or town may be obligated to pay by law or contract relating to such project. In addition such fees and charges shall be fixed and adjusted so as to provide revenues suffi-

cient to pay any costs incurred by the city or town to clean up or prevent pollution caused by existing active or inactive landfills or other solid waste disposal facilities, including the operation and maintenance of such facilities, or to provide solid waste disposal facilities, including but not limited to the principal of, premium, if any, and interest on debt of the city or town issued pursuant to section seven or eight, and to provide funds for the estimated cost of closing any existing operating solid waste facility, which revenue and funds shall be held by the city or town in a separate fund or funds for subsequent appropriation for such purpose. Except as otherwise provided above, such fees and charges may be fixed and adjusted by each city or town to cover all or any part of the costs specified above. Cities and towns may collect and enforce by legal proceedings such fees and charges from persons liable therefor and in connection with such collection and enforcement cities and towns may employ all the powers and privileges granted to them by law with respect to any similar fee or other charge including but not limited to the powers and privileges granted cities and towns under the provisions of sections forty-two A to forty-two F, inclusive, of chapter forty and sections sixteen to sixteen F, inclusive, of chapter eighty-three.

(g) In addition to any other power conferred by law, a city or town may from time to time contract for the operation by others of any solid waste facility or facilities financed or to be financed by such city or town in whole or in part under this section or any other general or special law or may from time to time lease the same to others for operation by them and may contract with any such operator for the disposal of refuse, garbage and waste, or for any of the foregoing, or for the purchase or use of by-products or residue resulting from the operation of such facilities. All other cities, towns and other public agencies and private parties are also authorized from time to time to contract with such city or town or with any such operator for the disposal of refuse, garbage and waste, or for any of the foregoing, or from the purchase or use of by-products or residue resulting from the operation of such facilities. Such contracts may be for such periods as agreed upon by the parties and, without limiting the generality of the foregoing, may include provisions for the delivery of minimum amounts of refuse, garbage and waste and payments for the use of the facilities to be based thereon; provided, however, that such provisions do not result in the imposition of a contract penalty for municipal participation in a commonwealth approved program of residential source separation of recyclable materials, for unit prices, which may be graduated, and for adjustments thereof. Such contracts may also include provisions for the payment or performance of obligations imposed on cities, towns or other public agencies notwithstanding the interruption, curtailment or abandonment of construction or operation of the facilities; provided, however, that it shall be contrary to public policy to enforce such obligations against a city, town or other public agency unless notice of an operating permit granted by the department of environmental protection for the facility shall have been recorded as provided in section one hundred and fifty A of chapter one hundred and eleven, and the interruption, curtailment or abandonment is attributable to circumstances which are beyond the control of the contractor or operator of the facilities and which render it physically or commercially impracticable or legally impermissible to operate the facilities even if the facilities conformed to the operating plans and specifications for which said operating permit was recorded. Such payments, unit prices or adjustments need not be specifically stated in said contract but may be determined by formulae if set forth therein. In addition, supplementary charges, or adjustments, may be imposed by the facility upon cities and towns in payment for increases in costs or decreases in revenues, incurred, or projected to be incurred, by the facility as the result of changes in state or federal laws and regulations directly affecting the operations of the facility. Any such supplementary charge or adjustment shall include documentation which provides a detailed statement accounting for the causes of any increases in costs, or losses of revenues, for which by the terms of the contract a supplementary charge or adjustment may be made, documents prepared by qualified accountants which set forth the assumptions, formulas and calculations used in computing the amount of the supplementary charge or adjustment, and an accounting of the supplementary charge or adjustment being imposed and an evaluation as to whether they are allowable under the terms of the contract and as to whether they have been correctly calculated. At the end of each fiscal year, the facility shall document the actual increases in cost, or decreases in revenues, and the actual amount of additional fees received by the facility during the past year, and determine if the actual increased costs or decreased reve-

nues are at variance with the revenues and expenditures estimated and used to establish the amount of any approved supplementary charge or adjustment. The supplementary charge or adjustment shall be recalculated using the actual figures and the fees for the succeeding year shall reflect the appropriate amounts to be either refunded to or recouped from the cities and towns. Any dispute between a city or town and a facility regarding the imposition of such supplementary charge or adjustment shall be resolved by arbitration at the request of either party. Both parties shall provide all necessary data to assist the arbitrator or arbitration panel in its determination. The findings of the arbitrator or the arbitration panel shall be binding upon the facility and the city or town.

Any contract or lease under this section by a city or town may be entered into by the appropriate officers acting under general authorization of the city council, town council or town meeting and may run for a period not exceeding forty years from the date of the contract or lease or from the date of commencing regular operation of the facility or facilities, as determined or estimated in such contract or lease, whichever date is later. Any contract or lease hereunder may include provisions for arbitration and reasonable restrictions against other disposal by cities, towns or other public agencies of the substances covered thereby while the contract is in force and disposal under the contract is practicable. A contract by a city or town hereunder shall not be subject to section four of chapter forty and shall not be precluded by the acceptance of section nine A of chapter ninety-two. The obligations represented by payments by a city or town under such a contract shall not be included in any determination of the borrowing capacity of such city or town under any limitation on its indebtedness.

In the event that any such solid waste disposal facility includes or is to include facilities for the production of steam as a by-product, any corporation, operating or leasing such solid waste disposal facility, whether domestic or foreign, or other person owning, occupying or operating the facility shall have the powers granted by section twelve of chapter one hundred and fifty-eight but the production and sale of such steam and the foregoing grant powers shall not cause the corporation or person to be otherwise subject to chapter one hundred and fifty-eight or excluded from chapter one hundred and fifty-six or one hundred and fifty-six B or cause the corporation to be deemed a heat or power company for the purposes of the corporation laws of the commonwealth.

Any contract with a city or town for the operation by others of any solid waste facility or facilities under this section, or any lease of the same to others for operation by them, shall contain such provisions as may be deemed necessary to protect the public interest, including but not limited to provisions as to the rates to be charged or for the approval of such rates by the city or town and provisions requiring approval by the city or town of contracts with third parties for the disposal of refuse, garbage and waste. In entering into contracts or leases for the operation of the facility or facilities, the city or town is directed insofar as practicable, to provide for just and equitable rates and a fair but not excessive return to the operator and to provide for meeting public disposal needs in preference to private needs.

The city or town or any person operating a facility or facilities, including but not limited to recycling facilities, under a contract or lease pursuant to this section shall not be required to pay any property taxes or assessments on any real or personal property included in such facility or facilities or any sales, use or similar tax on the sale, use, storage or consumption of any personal property in such operation. A contract or lease hereunder may provide, however, for payments to the city or town in lieu of taxes and assessments.

(h) The provisions of subsection (c) may be used by a city or town as appropriate in connection with general debt obligations of the city or town issued pursuant to other general or special laws for solid waste disposal purposes as well as in connection with debt obligations issued under this section. The provisions of subsections (f) and (g) are applicable to any city or town whether or not any such city or town has issued debt obligations under this section or under any other provision of law for solid waste disposal purposes.

(i) The provisions of this section shall be deemed to provide an additional and alternative means for the effectuation of the purposes authorized hereby and shall be regarded as supplemental and additional to, and not in derogation of, powers conferred upon cities or towns by other laws; provided, however, that if any provision of this section shall be contrary to or conflict with any provision of any other general or special law in any circum-

stances, the provision of this section shall control in such circumstances.

Added by St.1987, c. 584, § 15. Amended by St.1990, c. 177, §§ 127, 128.

§ 29. Repealed, 1969, 849, Sec. 48; 1971, 766, Sec. 11

§ 30. Determination of amount of appropriation for departments

A city, except Boston, wherein the appropriation for any department is determined by law at a certain rate or percentage of the taxable valuation or the valuation of the taxable property therein, or however otherwise the same may be described, shall, in addition to the amount so determined, appropriate and use for such department such proportion of the proceeds of the tax upon incomes, returned by the commonwealth to the city under section eighteen of chapter fifty-eight, as the appropriation so determined by law bears to the total local tax levy of that city for the current fiscal year; but in each fiscal year such departments shall be credited with their proportion of the income tax received during the preceding fiscal year.

Amended by St.1969, c. 849, § 55.

Historical and Statutory Notes

St.1917, c. 209.
St.1918, c. 107.

§ 31. Liabilities in excess of appropriations forbidden; exceptions

No department financed by municipal revenue, or in whole or in part by taxation, of any city or town, except Boston, shall incur a liability in excess of the appropriation made for the use of such department, each item recommended by the mayor and voted by the council in cities, and each item voted by the town meeting in towns, being considered as a separate appropriation, except in cases of major disaster, including, but not limited to, flood, drought, fire, hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, which poses an immediate threat to the health or safety of persons or property, and then only by a vote in a city of two-thirds of the members of the city council, and in a town by a majority vote of all the selectmen. Payments of liabilities incurred under authority of this section may be made, with the written approval of the director, from any available funds in the treasury, and the amounts of such liabilities incurred shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors who shall include the amounts so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has appropriated amounts specified to be for such liabilities; provided, that, if proceedings are brought in accordance with provisions of section fifty-three of chapter forty, no payments shall be made and no amounts shall be certified to the assessors until the termination of such proceedings. Payments of final judgments and awards or orders of payment approved by the industrial accident board rendered after the fixing of the tax rate for the current fiscal year may, with the approval of the director of accounts if the amount of the judgment or award is over ten thousand dollars, be made from any available funds in the treasury, and the payments so made shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has otherwise made provision therefor.

The provisions of this section, so far as apt, shall apply to districts, and the prudential committee, if any, otherwise the commissioners, shall act in place of the members of the city council or selectmen.

Amended by St.1946, c. 358, § 23; St.1949, c. 138; St.1954, c. 46; St.1955, c. 259; St.1969, c. 505, § 7; St.1969, c. 849, § 55A as added by St.1971, c. 766, § 14; St.1973, c. 832; St.1979, c. 194, § 1; St.1982, c. 22, § 2; St.1991, c. 544, § 2.

Historical and Statutory Notes

St.1913, c. 719, §§ 1, 16.

§ 31A. Report of estimated expenses; period covered; contents

Every officer of any city except Boston having charge of, or jurisdiction over, any office, department or undertaking, requesting an appropriation shall, between November first and December first of each year, furnish the mayor and the city auditor, or officer having similar duties, on forms provided by the city auditor or officer having similar duties, and approved by the bureau of accounts in the department of corporations and taxation, detailed estimates of the full amounts deemed necessary for the next fiscal year for the ordinary maintenance of the office, department or undertaking

under his charge or jurisdiction, and for expenditures other than the ordinary maintenance, with the amounts, if any, expended for similar purposes during the preceding fiscal year and during the first four months of the then current fiscal year, and an estimate of the amounts required to be expended for such purposes during the last eight months of the then current fiscal year, giving explanatory statements of any differences between the amount of any estimate for the next fiscal year and the amount expended or estimated to be required as aforesaid.

The information hereby required to be furnished shall set forth the number of permanent or temporary employees, or both, requested in each classification or rating in the next fiscal year and the number of permanent or temporary employees, or both, employed on October thirty-first of the then fiscal year, or the nearest week-end thereto, except laborers and persons performing the duties of laborers, with the annual, monthly, weekly or hourly compensation of such employees, and shall state whether such compensation is fixed by ordinance or otherwise and whether or not such employees are subject to chapter thirty-one.

The foregoing shall not prevent any city, upon recommendation of the mayor, from so setting forth the number of permanent or temporary laborers and persons performing the duties of laborers, or both such permanent and temporary laborers and persons, with the annual, monthly, weekly or hourly compensation of such employees.

The city auditor, or officer having similar duties, shall forthwith at the close of each calendar year furnish the mayor with a written report of the money received from estimated receipts applicable to the payment of expenditures of the first six months of the then current fiscal year, with an estimate of such receipts for the last six months of such year and for the next fiscal year.

Added by St.1941, c. 473, § 1. Amended by St.1953, c. 654, § 3; St.1969, c. 849, §§ 56 to 58.

§ 31B. Repealed, 1969, 505, Sec. 6

Historical and Statutory Notes

See c. 44, § 31.

§ 31C. Construction contracts; certificate as to availability of funds; effect of certificate upon defense of insufficiency of appropriations

No contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or public work by any city or town costing more than two thousand dollars shall be deemed to have been made until the auditor or accountant or other officer of the city or town having similar duties has certified thereon that an appropriation in the amount of such contract is available therefor and that an officer or agent of the city, town or awarding authority has been authorized to execute said contract and approve all requisitions and change orders. No order to the contractor for a change in or addition to the work to be performed under a contract subject to this section, whether in the form of a drawing, plan, detail or any other written instruction, unless it is an order which the contractor is willing to perform without any increase in the contract price, shall be deemed to have been given until the auditor or accountant, or other officer of the city or town having similar duties, has certified thereon that an appropriation in the amount of such order is available therefor; but such certificate shall not be construed as an admission by the city or town of its liability to pay for such work. The certificate of the auditor or accountant or other officer of the city or town having similar duties, that an appropriation in the amount of such contract or order is available shall bar any defense by the city or town on the grounds of insufficient appropriation; and any law barring payment in excess of appropriations shall not apply to amounts covered by any certificate under this section.

Added by St.1964, c. 693, § 1. Amended by St.1986, c. 447; St.1989, c. 341, § 27.

§ 31D. Snow and ice removal; emergency expenditures; reporting requirements

Any city or town may incur liability and make expenditures in any fiscal year in excess of available appropriations for snow and ice removal, provided that such expenditures are approved by the town manager and the finance or advisory committee in a town having a town manager, by the selectmen and the finance or advisory committee in any other town, by the city manager and the city council in a city having a city manager or by the mayor and city council in any other city; provided, however, that the appropriation for such purposes in said fiscal year equaled or exceeded the appropriation for said purposes in the prior fiscal year. Expenditures made under authority of this section shall be certified to the board of assessors and included in the next annual tax rate.

Every city or town shall annually, not later than September fifteenth, report to the division of local services of the department of revenue the total amounts appropriated and expended, including any funding or reimbursements received from the commonwealth, for snow and ice removal in the fiscal year ending on the preceding June thirtieth.

Added by St.1976, c. 33. Amended by St.1996, c. 45, § 4.

§ 32. Submission of city budget to city council; procedure for approval, rejection or alteration

Within one hundred and seventy days after the annual organization of the city government in any city other than Boston, the mayor shall submit to the city council the annual budget which shall be a statement of the amounts recommended by him for proposed expenditures of the city for the next fiscal year. The annual budget shall be classified and designated so as to show separately with respect to each officer, department or undertaking for which an appropriation is recommended:—

(1) Ordinary maintenance, which shall also include debt and interest charges matured and maturing during the next fiscal year, and shall be subdivided as follows:—

(a) Salaries and wages of officers, officials and employees other than laborers or persons performing the duties of laborers; and

(b) Ordinary maintenance not included under (a); and

(2) Proposed expenditures for other than ordinary maintenance, including additional equipment the estimated cost of which exceeds one thousand dollars.

The foregoing shall not prevent any city, upon recommendation of the mayor and with the approval of the council, from adopting additional classifications and designations.

The city council may by majority vote make appropriations for the purposes recommended and may reduce or reject any amount recommended in the annual budget. It shall not increase any amount in or the total of the annual budget nor add thereto any amount for a purpose not included therein except on recommendation of the mayor, and except as provided in section thirty-three; provided, however, that in the case of the school budget or in the case of a regional school district assessment, the city council, on the recommendation of the school committee or on recommendation of a regional district school committee, may by a two-thirds vote increase the total amount appropriated for the support of the schools or for the regional district schools over that requested by the mayor; and provided, further, that no such increase shall be voted if it would render the total annual budget in excess of the property tax limitations set forth in section twenty-one C of chapter fifty-nine. Except as otherwise permitted by law, all amounts appropriated by the city council, as provided in this section, shall be for the purposes specified. In setting up an appropriation order or orders based on the annual budget, the council shall use, so far as possible, the same classifications required for the annual budget. If the council fails to take action with respect to any amount recommended in the annual budget, either by approving, reducing or rejecting the same, within forty-five days after the receipt of the budget, such amount shall without any action by the council become a part of the appropriations for the year, and be available for the purposes specified.

If, upon the expiration of one hundred and seventy days after the annual organization of the city government, the mayor shall not have submitted to the city council the annual budget for said year, the city council shall, upon its own initiative, prepare such annual budget by June thirtieth of such year, and such budget preparation shall be, where applicable, subject to the provisions governing the annual budget of the mayor.

Within fifteen days after such preparation of the annual budget, the city council shall proceed to act by voting thereon and all amounts so voted shall thereupon be valid appropriations for the purposes stated therein to the same extent as though based upon a mayor's annual budget, but subject, however, to such requirements, if any, as may be imposed by law.

If the council fails to take action with respect to any amount recommended in the budget, either by approving, reducing or rejecting the same, within fifteen days after such preparation, such amount shall, without further action by the council, become a part of the appropriations for the year, and be available for the purposes specified.

Notwithstanding any provisions of this section to the contrary, the mayor may submit to the city council a continuing appropriation budget for said city on a month by month basis for a period not to exceed three months if said city has not approved

an operating budget for the fiscal year because of circumstances beyond its control.

Nothing in this section shall prevent the city council, acting upon the written recommendation of the mayor, from voting appropriations, not in excess of the amount so recommended, either prior or subsequent to the passage of the annual budget.

The provisions of this section shall apply, in any city adopting the Plan E form of government under chapter forty-three, only to the extent provided by section one hundred and four of said chapter.

Neither the annual budget nor appropriation orders based thereon shall be in such detail as to fix specific salaries of employees under the direction of boards elected by the people, other than the city council.

The city council may, and upon written request of at least ten registered voters shall, give notice of a public hearing to be held on the annual budget, prior to final action thereon, but not less than seven days after publication of such notice, in a newspaper having general circulation in the city. At the time and place so advertised, or at any time or place to which such public hearing may from time to time be adjourned, the city council shall hold a public hearing on the annual budget as submitted by the mayor, at which all interested persons shall be given an opportunity to be heard for or against the proposed expenditures or any item thereof.

Amended by St.1938, c. 175, § 1; St.1938, c. 378, § 16; St.1941, c. 473, § 2; St.1953, c. 51; St.1953, c. 79; St.1969, c. 849, §§ 59, 60; St.1975, c. 26, §§ 1, 2; St.1985, c. 9, §§ 2, 3; St.1987, c. 329, § 1; St.1995, c. 20, §§ 1 to 3.

Historical and Statutory Notes

St.1913, c. 719, §§ 1, 20.
St.1915, c. 138, § 1.
St.1920, c. 172.

§ 33. Power of council to add to appropriation; conditions; limitations

In case of the failure of the mayor to transmit to the city council a written recommendation for an appropriation for any purpose not included in the annual budget, which is deemed necessary by the council, after having been so requested by vote thereof, said council, after the expiration of seven days from such vote, upon its own initiative may make such appropriation by a vote of at least two thirds of its members, and shall in all cases clearly specify the amount to be expended for each particular purpose, but no appropriation may be voted hereunder so as to fix specific salaries of employees under the direction of boards elected by the people, other than the city council.

Amended by St.1941, c. 473, § 3.

Historical and Statutory Notes

St.1913, c. 719, §§ 1, 20.
St.1915, c. 138, § 1.
St.1920, c. 172.

§ 33A. Salary provisions in budget; requirements and limitations

The annual budget shall include sums sufficient to pay the salaries of officers and employees fixed by law or by ordinance. Notwithstanding any contrary provision of any city charter, no ordinance providing for an increase in the salaries or wages of municipal officers or employees shall be enacted except by a two thirds vote of the city council, nor unless it is to be operative for more than three months during the calendar year in which it is passed. No new position shall be created or increase in rate made by ordinance, vote or appointment during the financial year subsequent to the submission of the annual budget unless provision therefor has been made by means of a supplemental appropriation. No ordinance, vote or appointment creating a new position in any year in which a municipal election is held shall be valid and effective unless said ordinance, vote or appointment is operative for more than three months during said municipal election year.

Amended by St.1943, c. 62; St.1947, c. 298, § 1; St.1950, c. 370; St.1955, c. 358; St.1960, c. 301; St.1969, c. 849, § 61.

Historical and Statutory Notes

St.1922, c. 250.

§ 33B. Transfer of appropriations; restrictions

(a) On recommendation of the mayor, the city council may, by majority vote, transfer any amount appropriated for the use of any department to another appropriation for the same department. In addition, the city council may, by majority vote, on recommendation of the mayor, transfer within the last 2 months of any fiscal year, or during the first 15 days of the new fiscal year to apply to the previous fiscal year, an amount appropriated for the use of any department other than a municipal light department or a school department to the appropriation for any other department, but the amount transferred from 1 department to another may not exceed, in the aggregate, 3 per cent of the annual budget of the department from which the

transfer is made. Except as provided in the preceding sentence, no transfer shall be made of any amount appropriated for the use of any city department to the appropriation for any other department except by a ⅔ vote of the city council on recommendation of the mayor and with the written approval of the amount of the transfer by the department having control of the appropriation from which the transfer is proposed to be made. No transfer involving a municipal light department or a school department shall be made under the previous sentence without the approval of the amount of the transfer by a vote of the municipal light department board or by a vote of the school committee, respectively.

(b) A town may, by majority vote at any meeting duly held, transfer any amount previously appropriated to any other use authorized by law. Alternatively, the selectmen, with the concurrence of the finance committee or other entity establish under section 16 of chapter 39, may transfer within the last 2 months of any fiscal year, or during the first 15 days of the new fiscal year to apply to the previous fiscal year, any amount appropriated for the use of any department other than a municipal light department or a school department to the appropriation for any other department or within a department, but the amount transferred from 1 department to another or within a department may not exceed, in the aggregate, 3 per cent of the annual budget of the department from or within which the transfer is made or $5,000, whichever is greater.

(c) No approval other than that expressly provided in this section shall be required for any transfer under this section.

Added by St.1943, c. 62. Amended by St.1951, c. 798, § 6; St.1965, c. 204; St.1969, c. 849, § 61A as added by St.1971, c. 766, § 15; St.2006, c. 77, eff. May 4, 2006.

§ 34. Repealed, 1969, 849, Sec. 48; 1971, 766, Sec. 11

§ 35. Towns and districts; right to petition for an audit or installation of accounting system

Any town, and any district, or regional school district, at a meeting legally called therefor, may petition the director for an audit of its accounts or for the installation of an accounting system; and said director, as soon as possible after the receipt of such petition, shall cause such audit to be made or system of accounts to be installed. Any town or district, at a meeting legally called therefor, after such accounting system has been installed, may petition for subsequent audits, or may provide in its by-laws for periodical audits under the supervision of said director, who shall cause such audits to be made. The selectmen, the prudential committee, if any, otherwise the commissioners, or the regional district school committee, may petition said director for an audit of the town or district accounts, as the case may be, when, in their opinion, the condition of the accounts is such as to warrant the making of such audit, and said director, as soon as possible after the receipt of such petition, shall cause such audit to be made.

Amended by St.1941, c. 454; St.1951, c. 17, § 1; St.1967, c. 46, § 5.

Historical and Statutory Notes

St.1910, c. 598, § 1.
St.1913, c. 706, § 1.
St.1916, c. 13, § 1.
St.1917, c. 159, § 1.
St.1917, c. 192, § 1.
St.1918, c. 257, § 159.
St.1919, c. 5.
St.1920, c. 2.

§ 36. Cities; right to petition for an audit or installation of accounting system

Any city may, by vote of its city council, petition the director for an audit of its accounts or for the installation of an accounting system; and, if a statute or an ordinance requires a city official or commission to cause an audit to be made, such official or commission may petition therefor, and said director, as soon as possible after the receipt of such petition, shall cause such audit to be made or accounting system installed.

Historical and Statutory Notes

St.1910, c. 598, § 3.
St.1913, c. 706, § 1.

§ 37. Duties of director with respect to installation of accounting system

Whenever, after such accounting system has been installed, a city, town or district accounting officer requests the advice or assistance of the director, he shall render such assistance as in his judgment may be necessary.

Historical and Statutory Notes

St.1913, c. 706, § 1.
St.1917, c. 159, § 2.

§ 38. Uniformity of accounting systems

The accounting systems installed in accordance with this chapter shall be such as will, in the judgment of the director, be most effective in securing uniformity of classification in the accounts of such cities, towns and districts. The director may supply approximately at cost to cities, towns and districts where such accounting systems have been installed such books, forms or other supplies as may be required from time to time after the original installation of such systems. Such accounting systems and classifications, so far as they pertain to school committees, shall be subject to the advice and approval of the board of education.

Amended by St.1974, c. 728, § 2.

Historical and Statutory Notes

St.1910, c. 598, § 2.
St.1913, c. 706, § 1.
St.1917, c. 24.
St.1917, c. 159, § 2.

§ 39. Results of audit; report to municipality

Upon the completion of an audit under section thirty-five or thirty-six, the director shall render a report to the city government or the board of selectmen or the prudential committee or commissioners, respectively, embodying the results of his findings, with such suggestions as he may deem advisable for the proper administration of the finances of the city, town or district.

Historical and Statutory Notes

St.1910, c. 598, § 5.
St.1917, c. 159, § 3.

§ 40. Audit of accounts; frequency

The director shall cause an audit to be made of the accounts of all cities and towns and of all districts and regional school districts of the commonwealth and may cause subsequent audits to be made of the accounts of each city and town annually, and of the accounts of each district and regional school district as often as once in two years or annually at the request of the prudential committee, if any, otherwise the commissioners, or the regional district school committee, and for this purpose he, and his duly accredited agents, shall have access to all necessary papers, books, and records. All accounts subject to audit by town auditors under section fifty-three of chapter forty-one shall be subject to audit by the director, and the trustees of any property the principal or income of which, in whole or in part, was bequeathed or given in trust for public uses for the benefit of the town or any part thereof, or for the benefit of the inhabitants of the town or any part thereof, shall give the director, or his duly accredited agents, access to their accounts, funds, securities and evidences of property for the purposes of the audit. Upon the completion of each audit as aforesaid, a report thereunder shall be made to the mayor and city government in cities, to the selectmen in towns, to the prudential committee and commissioners in a district, and to the regional district school committee in a regional school district, and a copy of the same shall be furnished to the city, town or district clerk, who shall cause the same or a summary of its essential features to be published at the expense of the city, town or district. The director, in his discretion, may give preference to audits upon petitions under section thirty-five or thirty-six over audits under this section.

Commencing with the fiscal year nineteen hundred and eighty-seven, regional school districts may satisfy the requirements of the Single Audit Act of 1984, 31 USC Sec. 7502, by causing audits of its records to be made annually or biennially by an independent auditor to be selected by such regional school districts to conduct such audits. Such audits shall be made in accordance with federal government auditing standards.

Amended by St.1939, c. 339; St.1945, c. 29, § 1; St.1947, c. 298, § 6; St.1948, c. 82; St.1951, c. 17, § 2; St.1967, c. 46, § 6; St.1986, c. 619.

Historical and Statutory Notes

St.1920, c. 245, §§ 1, 3.
St.1926, c. 158.

§ 41. Expenses of auditing; payment

The expenses incurred under sections thirty-five to forty, inclusive, shall be paid primarily by the commonwealth; and the state treasurer shall issue his warrant requiring the assessors of the cities and towns concerned and of the towns in which such district is located to assess a tax to the amount of said expense, and such amounts shall be collected and paid to the state treasurer as provided by section twenty of chapter fifty-nine. Any balance due shall be assessed, collected and paid in the succeeding years in like manner.

Amended by St.1946, c. 432, § 4.

Historical and Statutory Notes

St.1910, c. 598, § 6.
St.1917, c. 159, §§ 4, 5.
St.1920, c. 245, § 2.

§ 42. Audits by private accountants; required reports

Whenever a city or town causes an audit of its accounts or the accounts of separate departments to be made by a person of its own selection, the city or town clerk shall immediately, upon the employment of such person, file his name and address with the director, and such person shall, within ten days after making the report of his audit and recommendations to the city or town, file a certified copy thereof with the director; and in any such case the director may, in his discretion, accept the audit so made, or cause an audit to be made under section forty.

Historical and Statutory Notes

St.1920, c. 245, § 4.

§ 42A. Pilot program for audits of public functions of city, town, county, etc. where irregularities or illegal acts are suspected; establishment

The department of the state auditor, in accordance with section 12 of chapter 11, shall establish a 2 year pilot program for the audit of the accounts, programs, activities, and other public functions of a particular city, town, county, district, or regional school district where there are suspected irregularities or illegal acts. Any audit undertaken under this section shall include an audit of any accounts, programs, activities and functions of a city, town, county, district or regional school district for the purpose of identifying any irregularities or illegal acts by a department, office or agency of the respective city, town, county, district or regional school district. On or before April 1 of each year, the department of the state auditor shall submit a report to the house and senate committees on ways and means which shall include, but not be limited to: (i) the number of audits performed under this section; (ii) a summary of findings under the audits; and (iii) the cost of each audit. Nothing in this section shall require the department of the state auditor to perform an audit of a city, town, county, district or regional school district.

Added by St.2003, c. 46, § 35, eff. July 31, 2003.

§ 43. Accounting reports; returns; forms

The director shall annually furnish to the auditor or other accounting officer of each city and town schedules so arranged as to provide for uniform returns giving detailed statements of all receipts classified by sources, and all payments classified by objects, for its last fiscal year; a statement of the public debt showing the purpose for which each item of the debt was created and the provision made for the payment thereof; and a statement of assets and liabilities at the close of the fiscal year. The director may prescribe standard forms intended to promote the systematic accounting of financial transactions and the publication of the same in the city and town reports. He shall collect from the proper local authorities such other information pertaining to municipal affairs as in his judgment may be of public interest. All accounting and other officials and custodians of public money of cities and towns shall fill out properly and return promptly to the director all schedules transmitted by him to them. If a city or town fails within sixty days after a request has been made by the director to furnish the information authorized to be collected under the provisions of this section, the director may obtain such information through the use of his agents and assistants. The cost for collecting such information shall be borne in the manner prescribed by section forty-one for expenses incurred under sections thirty-five to forty, inclusive.

Amended by St.1951, c. 276.

Historical and Statutory Notes

St.1906, c. 296, § 1.
St.1909, c. 371, §§ 6, 10.

§ 44. Reports of municipal statistics; publication

The commissioner of revenue shall include in his annual report statistics relative to the financial affairs of cities and towns and other information of public interest pertaining to municipal affairs. Said part of his report may be printed and distributed as a separate document or in separate parts, and the commissioner may also publish, at such intervals as he deems expedient, bulletins or special reports of the director relative to municipal affairs.

Amended by St.1978, c. 514, § 31.

Historical and Statutory Notes

St.1906, c. 296, § 2.
St.1909, c. 371, §§ 3, 6.
St.1911, c. 74.
St.1918, c. 189, §§ 1, 2.
St.1918, c. 257, § 9.
St.1919, c. 5.
St.1919, c. 350, §§ 8, 53.
St.1920, c. 2.

§ 45. Powers of director; attendance of witnesses; production of books and documents

The director may require the attendance of witnesses and the production of books and documents, and may examine witnesses under oath in the same manner as in the superior court.

Historical and Statutory Notes

St.1869, Res. 102.
P.S.1882, c. 31, § 14.
R.L.1902, c. 107, § 2.
St.1908, c. 462, § 1.
St.1909, c. 371, §§ 2, 10.
St.1912, c. 560, § 1.

§ 46. Destruction of records

The director, having first obtained authority from the governor and council, may destroy or sell all such records, papers and schedules accumulated in the bureau of accounts as in his judgment are of no value.

Amended by St.1953, c. 654, § 4.

Historical and Statutory Notes

St.1887, c. 43, § 1.
R.L.1902, c. 107, § 4.
St.1909, c. 371, §§ 9, 10.

§ 46A. Powers of director; investigation of municipal affairs

The director may upon his own initiative, in the case of any city, except Boston, or any town, and shall, when requested by the mayor or city council of any such city or the selectmen of any town, if conditions appear to the director to warrant it, investigate the accounts and financial transactions and affairs of such city or town, or of any department, board, commission or officer thereof. For the purpose of conducting such investigations, the director may employ such temporary investigators as may be necessary, who shall receive such compensation as the commissioner of revenue may fix and shall not be subject to chapter thirty-one. For the aforesaid purposes the director and his duly accredited investigators or agents shall have access to all necessary papers, vouchers, books and records. Upon the completion of such an investigation, a report thereon shall be made to the mayor and city council or to the selectmen, as the case may be, and a copy of the same shall be furnished to the attorney general, and to the city or town clerk who shall cause it or a summary of its essential features to be published at the expense of the city or town. A municipal officer or employee or a member of a municipal department, board or commission whose accounts or transactions are being investigated under this section shall afford to the director, his investigators and agents such assistance as they may require. Refusal or neglect by such an officer, employee or member to afford such assistance shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or both. The expenses incurred hereunder shall be paid primarily by the commonwealth; and the state treasurer shall issue a warrant requiring the assessors of the city or town concerned to assess a tax to the amount of said expenses, and such amounts shall be collected and paid to the state treasurer in the same manner and subject to the same penalties as state taxes. Any balance due shall be assessed in the succeeding years in the same manner as other state taxes.

Added by St.1932, c. 155. Amended by St.1978, c. 514, § 32.

§ 47. Right to establish or use

No further sinking funds for the payment of debt shall be established by any city, town or district, but cities and towns shall contribute to every sinking fund established prior to May twenty-eighth, nineteen hundred and thirteen, and districts shall contribute to every sinking fund established prior to March twentieth, nineteen hundred and fifteen, until such sinking fund, with its accumulations, shall be sufficient to extinguish at maturity the debt for which it was established. This section shall not apply to Boston.

Historical and Statutory Notes

St.1875, c. 209, § 7.
P.S.1882, c. 29, §§ 12, 13.
R.L.1902, c. 27, § 17.
St.1913, c. 719, §§ 1, 13.
St.1915, c. 85, § 4.

§ 48. Sinking fund commissioners; powers and duties; records; compensation

The sinking fund commissioners shall have charge of all sinking funds intrusted to them by the city, town or district, and shall invest and reinvest, in the name of the board, all amounts contributed thereto and the income thereof as it accrues, in the particular bonds, notes or certificates of indebtedness for the redemption of which such sinking fund was established, or in other bonds of their city, town or district secured by sinking funds, or in temporary loan notes or certificates of their city, town or district issued in anticipation of taxes, or in securities, except personal securities, in which funds of savings banks may by law be invested; but

no part thereof shall be loaned to the city or town except as herein provided. The commissioners may sell such securities and reinvest the proceeds. They shall keep a record of their proceedings, and shall annually make a written report to the city, town or district of the amount and condition of said funds and of the income thereof for the preceding financial year. Their records and the securities belonging to said funds shall at all times be subject to the inspection of the mayor, aldermen, selectmen, or any committee or commissioners of the city, town or district authorized for the purpose. No member of the board shall receive compensation for his services; but the necessary expenses of the board shall be paid by the city, town or district, and the treasurer and secretary thereof shall receive such compensation as shall be fixed by the city, town or district.

When securities for the redemption of which a sinking fund has been established become a part of said sinking fund, the commissioners shall cause a notice to be stamped or written on the face thereof that they are a part of such sinking fund, and are not negotiable; and all coupons thereof, as they are paid, shall be cancelled.

Historical and Statutory Notes

St.1875, c. 209, § 5.
P.S.1882, c. 29, § 11.
St.1894, c. 146.
R.L.1902, c. 27, § 15.
St.1915, c. 85, § 4.

§ 49. Issuance of new bonds

If, when bonds payable from the sinking fund become due, the sinking fund commissioners of a city hold any other bonds of the city not due and payable, which have been stamped as the property of said sinking fund and are not negotiable, they shall so certify to the mayor and request that new bonds be issued to them by the city in lieu of the bonds not due. If the mayor is satisfied that there is occasion therefor, he shall cause new bonds to be prepared, bearing the same rate of interest, and payable as to principal and interest on the same dates as the bonds to be surrendered, and identical in terms therewith; and when executed by him and the city treasurer and approved by the committee on finance of the city council, they shall be issued to such commissioners on the surrender by them to the city treasurer and the cancellation of such former bonds. Such cancellation and new issue shall be entered in full on the books of the city treasurer.

Historical and Statutory Notes

St.1895, c. 243.
R.L.1902, c. 27, § 16.

§ 50. Repealed, 1921, 486, Sec. 12

§ 51. Repealed, 1938, 458

§ 52. Issuance of bonds in exchange for bearer instruments

A county, city, town or district, or any domestic corporation, which shall have issued any bond, note or certificate of indebtedness payable to bearer, held by the sinking fund commissioners of any city, town or district, shall, at the request of such commissioners, issue in exchange therefor a bond, note or certificate of the same effect, payable to such commissioners by name; provided, that the city, town or district desiring such exchange shall, if requested, furnish the blank form for the bond, note or certificate therefor in the same general form as that furnished by the commonwealth under section thirty-nine of chapter twenty-nine.

Historical and Statutory Notes

St.1912, c. 377, § 1.
St.1915, c. 85, § 4.
St.1916, c. 152.
St.1917, c. 116, §§ 1, 2.

§ 53. City, town or district funds; use and disposition

All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof; provided, however, that (1) sums allotted by the commonwealth or a county to cities or towns for highway purposes and sums allotted by the commonwealth to cities, towns or districts for water pollution control purposes shall be available therefor without specific appropriation, but shall be used only for the purposes for which the allotment is made or to meet temporary loans issued in anticipation of such allotment as provided in section six or six A, (2) sums not in excess of twenty thousand dollars recovered under the terms of fire or physical damage insurance policy and sums not in excess of twenty thousand dollars received in restitution for damage done to such city, town or district property may be used by the

officer or department having control of the city, town or district property for the restoration or replacement of such property without specific appropriation and (3) sums recovered from pupils in the public schools for loss of school books or paid by pupils for materials used in the industrial arts projects may be used by the school committee for the replacement of such books or materials without specific appropriation.

Amended by St.1960, c. 592, § 3; St.1962, c. 246; St.1967, c. 46, § 7; St.1968, c. 598, § 2; St.1970, c. 525; St.1972, c. 88; St.1972, c. 766, § 4; St.1978, c. 367, § 70A; St.1980, c. 169; St.1984, c. 181; St.1992, c. 62.

Historical and Statutory Notes

St.1920, c. 591, § 7.
St.1926, c. 205.

§ 53A. Grants and gifts; acceptance and expenditure

An officer or department of any city or town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift in cities having a Plan D or Plan E form of government with the approval of the city manager and city council, in all other cities with the approval of the mayor and city council, in towns with the approval of the board of selectmen, and in districts with the approval of the prudential committee, if any, otherwise the commissioners. Notwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation. If the express written terms or conditions of the grant agreement so stipulate, interest on the grant funds may remain with and become a part of the grant account and may be expended as part of the grant by such officer or department receiving the grant or gift without further appropriation. Any grant, subvention or subsidy for educational purposes received by an officer or department of a city, town or school district from the federal government may be expended by the school committee of such city, town or district without including the purpose of such expenditure in, or applying such amount to, the annual or any supplemental budget or appropriation request of such committee; provided, however, that this sentence shall not apply to amounts so received to which section twenty-six C of chapter seventy-one of the General Laws, and chapter six hundred and twenty-one of the acts of nineteen hundred and fifty-three, as amended, and chapter six hundred and sixty-four of the acts of nineteen hundred and fifty-eight, as amended, apply; and, provided further, that notwithstanding the foregoing provision, this sentence shall apply to amounts so received as grants under the Elementary and Secondary Education Act of 1965, (Public Law 89–10).[1] After receipt of a written commitment from the federal government approving a grant for educational purposes and in anticipation of receipt of such funds from the federal government, the treasurer, upon the request of the school committee, shall pay from the General Fund of such municipality compensation for services rendered and goods supplied to such federal grant programs, such payments to be made no later than ten days after the rendition of such services or the supplying of such goods; provided, however, that the provisions of such federal grant would allow the treasurer to reimburse the General Fund for the amounts so advanced.

Added by St.1964, c. 99. Amended by St.1967, c. 46, § 8; St.1967, c. 388, § 1; St.1983, c. 331; St.1984, c. 74; St.1986, c. 203; St.1986, c. 651, § 3.

[1] 20 U.S.C.A. § 236 et seq.; See, also, 20 U.S.C.A. § 2701 et seq.

§ 53A½. Gifts of tangible personal property; acceptance

A city council, with the mayor's approval if the charter so provides, or a board of selectmen or town council may, in its sole discretion and authority, accept gifts of tangible personal property on behalf of the city or town from the federal government, a charitable foundation, private corporation, individual, or from the commonwealth or any political subdivision thereof, and may, in its sole discretion and authority, use said gifts, without specific appropriation thereof, for the purpose of such a gift or, if no restrictions are attached to the gift, for such other purposes as it deems advisable.

Added by St.2000, c. 274.

§ 53B. Contributions by commonwealth; application to indebtedness

Any sums allotted and paid by the commonwealth to a city, town or district as a contribution towards the cost of a useful public works project, the state's share of the cost of which project was financed from the proceeds of a loan issued by such city, town or district, shall be applied towards the payment of such indebtedness.

Added by St.1968, c. 598, § 3.

§ 53C. Deposit and expenditure of compensation for off-duty or special detail work; appropriation for special fund; fee

All money received by a city, town or district as compensation for work performed by one of its employees on an off-duty work detail which is related to such employee's regular employment or for special detail work performed by persons where such detail is not related to regular employment shall be deposited in the treasury and shall be kept in a fund separate from all other monies of such city, town or district and, notwithstanding the provisions of section fifty-three, shall be expended without further appropriation in such manner and at such times as shall, in the discretion of the authority authorizing such off-duty work detail or special detail work, compensate the employee or person for such services; provided, however, that such compensation shall be paid to such employee or person no later than ten working days after receipt by the city, town or district of payment for such services.

When necessary, a city, town or district may appropriate funds to be placed in the special fund authorized by this section to be used for the purpose for which the fund was established. A city, town or district may establish a fee not to exceed ten per cent of the cost of services authorized under this section, which shall, except in the case of a city, town, district or the commonwealth, be paid by the persons requesting such private detail. Any such fee received shall be credited as general funds of the city, town or district and shall not be used again without further appropriation.

Districts shall include regional school districts.

Added by St.1970, c. 344. Amended by St.1973, c. 773; St.1976, c. 24; St.1980, c. 98; St.1982, c. 70.

§ 53D. Recreation and park self-supporting service revolving funds; creation; authorized use of funds; annual report; revocation of provisions

Notwithstanding the provisions of section fifty-three, any city or town which accepts the provisions of this section may establish in the city or town treasury a revolving fund which shall be kept separate and apart from all other monies by the treasurer and in which shall be deposited the receipts received in connection with the conduct of self-supporting recreation and park services of said city or town. The principal and interest thereon shall be expended at the direction of the authority, commission, board or official of such city or town with said responsibility without further appropriation, but only with the written approval of the mayor in cities, or city manager in Plan E cities, or the selectmen in towns, or in towns which have adopted the town manager form of government the town manager and only for the purpose of operating self-supporting recreation and park services. The city auditor or town accountant shall submit annually a report of said revolving fund to the mayor, city council, city manager, board of selectmen or town manager for their review and a copy of said report shall be submitted to the director of the bureau of accounts; provided, however, that funds in said revolving fund shall not be used for the purpose of paying any wages or salaries for full-time, as defined in the guidelines issued by the director of accounts, recreation and park employees; provided, further, that the unreserved fund balance shall not exceed ten thousand dollars at the close of each fiscal year and any such amount in excess of ten thousand dollars shall be paid into the city or town treasury as provided in section fifty-three.

A city or town which has accepted the provisions of this section may, in like manner, revoke its acceptance; provided, however, that any city or town may require by by-law or ordinance, that the provisions of this section may be subject to annual authorization by a vote of the annual town meeting or city council.

Added by St.1977, c. 665. Amended by St.1986, c. 63; St.1989, c. 223; St.1992, c. 42.

§ 53E. Agencies, boards, etc.; annual operating costs; offset by estimated receipts of user fees

Notwithstanding the provisions of section fifty-three, a city or town which accepts the provisions

of this section may specify when making an appropriation for the annual ordinary operating costs of any agency, board, department or office of said city or town that such costs may be offset, in part or in the aggregate, by the estimated receipts from the fees charged to users of the services provided by such agency, board, department or office.

The use of such fees shall be limited to an amount not to exceed the actual amounts received during the previous fiscal year or such other estimated amount as may be approved, in advance of appropriation, by the commissioner of revenue or his designee, and which is based upon adequate documented material supporting such estimated amounts.

Receipts so allocated shall be deposited in a special account by the city or town treasurer or otherwise specifically identified and may be expended for the purpose allocated without further appropriation. Any balance in such accounts at the end of the fiscal year shall be deposited into the general treasury of the city or town.

Any deficit resulting from any city or town acting under the provisions of this section shall be reported by the auditor, accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the aggregate appropriations to be assessed in the next subsequent annual tax levy, unless the city or town has provided funds to eliminate such deficit. Any deficit so incurred must be raised by taxation and shall be subject to all applicable provisions of chapter fifty-nine.

Each agency, board, department or office shall prepare an annual report of the change in cash balances in such entity which shall detail the cash receipts and disbursements for the year and shall be submitted to the mayor, city council, city manager, board of selectmen or town manager for their review and a copy of said report shall be submitted to the director of the bureau of accounts. Such report shall be prepared and submitted within forty-five days after the close of the fiscal year.

All such sums, so allocated, shall be treated as amounts voted from available funds for the purpose of deduction in accordance with the provisions of section twenty-three of chapter fifty-nine. All amounts voted from available funds shall be itemized in a schedule, on a form approved by the commissioner of revenue, prepared by the city or town clerk and included with the submission for approval of the tax rate by the commissioner of revenue as provided in section twenty-three of chapter fifty-nine. The assessors shall further attest, on said schedule, that the receipts itemized therein have not been included in any other deduction from the gross amounts to be raised.

Added by St.1981, c. 339, § 1.

§ 53E½. Revolving funds

Notwithstanding the provisions of section fifty-three, a city or town may annually authorize the use of one or more revolving funds by one or more municipal agency, board, department or office which shall be accounted for separately from all other monies in such city or town and to which shall be credited only the departmental receipts received in connection with the programs supported by such revolving fund. Expenditures may be made from such revolving fund without further appropriation, subject to the provisions of this section; provided, however, that expenditures shall not be made or liabilities incurred from any such revolving fund in excess of the balance of the fund nor in excess of the total authorized expenditures from such fund, nor shall any expenditures be made unless approved in accordance with sections forty-one, forty-two, fifty-two and fifty-six of chapter forty-one.

Interest earned on any revolving fund balance shall be treated as general fund revenue of the city or town. No revolving fund may be established pursuant to this section for receipts of a municipal water or sewer department or of a municipal hospital. No such revolving fund may be established if the aggregate limit of all revolving funds authorized under this section exceeds ten percent of the amount raised by taxation by the city or town in the most recent fiscal year for which a tax rate has been certified under section twenty-three of chapter fifty-nine. No revolving fund expenditures shall be made for the purpose of paying any wages or salaries for full time employees unless such revolving fund is also charged for the costs of fringe benefits associated with the wages or salaries so paid; provided, however, that such prohibition shall not apply to wages or salaries paid to full or part-time employees who are employed as drivers providing transportation for public school students; provided further, that only that portion of a revolving fund which is attributable to transportation fees may be used to pay such wages or salaries and provided, further, that any such wages or salaries so paid shall be reported in the budget submitted for the next fiscal year.

A revolving fund established under the provisions of this section shall be by vote of the annual town meeting in a town, upon recommendation of the board of selectmen, and by vote of the city council in a city, upon recommendation of the mayor or city manager, in Plan E cities, and in any other city or town by vote of the legislative body upon the recommendation of the chief administrative or executive officer. Such authorization shall be made annually prior to each respective fiscal year; provided, however, that each authorization for a revolving fund shall specify: (1) the programs and purposes for which the revolving fund may be expended; (2) the departmental receipts which shall be credited to the revolving fund; (3) the board, department or officer authorized to expend from such fund; (4) a limit on the total amount which may be expended from such fund in the ensuing fiscal year; and, provided, further, that no board, department or officer shall be authorized to expend in any one fiscal year from all revolving funds under its direct control more than one percent of the amount raised by taxation by the city or town in the most recent fiscal year for which a tax rate has been certified under section twenty-three of chapter fifty-nine. Notwithstanding the provisions of this section, whenever, during the course of any fiscal year, any new revenue source becomes available for the establishment of a revolving fund under this section, such a fund may be established in accordance with this section upon certification by the city auditor, town accountant, or other officer having similar duties, that the revenue source was not used in computing the most recent tax levy.

In any fiscal year the limit on the amount that may be spent from a revolving fund may be increased with the approval of the city council and mayor in a city, or with the approval of the selectmen and finance committee, if any, in a town; provided, however, that the one percent limit established by clause (4) of the third paragraph is not exceeded.

The board, department or officer having charge of such revolving fund shall report to the annual town meeting or to the city council and the board of selectmen, the mayor of a city or city manager in a Plan E city or in any other city or town to the legislative body and the chief administrative or executive officer, the total amount of receipts and expenditures for each revolving fund under its control for the prior fiscal year and for the current fiscal year through December thirty-first, or such later date as the town meeting or city council may, by vote determine, and the amount of any increases in spending authority granted during the prior and current fiscal years, together with such other information as the town meeting or city council may by vote require.

At the close of a fiscal year in which a revolving fund is not reauthorized for the following year, or in which a city or town changes the purposes for which money in a revolving fund may be spent in the following year, the balance in the fund at the end of the fiscal year shall revert to surplus revenue unless the annual town meeting or the city council and mayor or city manager in a Plan E city and in any other city or town the legislative body vote to transfer such balance to another revolving fund established under this section.

The director of accounts may issue guidelines further regulating revolving funds established under this section.

Added by St.1990, c. 275, § 1. Amended by St.1992, c. 224, § 1; St.1994, c. 60, §§ 72, 73.

§ 53E¾. Energy Revolving Loan Fund

(a) Notwithstanding section 53 to the contrary, a city or town may establish an Energy Revolving Loan Fund to provide loans to owners of privately-held real property in the city or town for energy conservation and renewable energy projects on their properties so as to prioritize energy efficiency as the first step toward reducing greenhouse gas emissions associated with buildings.

(b) The fund shall be established by ordinance or by-law. Before adoption of the ordinance or by-law, the board of selectmen, town council or the city council, as the case may be, shall conduct a public hearing on the question of its adoption. The ordinance or by-law shall designate an administrator for the fund and may provide for rules, regulations and procedures for administration of the fund and eligibility for loans the city or town considers necessary or proper to carry out this section. The administrator may consult with the division of green communities established in section 10 of chapter 25A in developing such regulations, rules and procedures for administration of the fund. The fund administrator may be a board, department or officer, or may consist of 1 or more members from 1 or more boards, departments or officers, of the city or town. A city or town which is a member of a regional planning commission may enter into a cooperative agreement with that com-

mission to perform as administrator for the fund. A regional governmental entity or county, if the county may incur debt under chapter 35 or any other general or special law extending a county's debt limit, may establish a fund subject to this section and may appoint a person to be the administrator of the fund.

(c) As authorized by section 4A of chapter 40, 2 or more municipalities may, in a city by vote of the city council, or, in a town by vote of the board of selectmen, enter into an agreement to jointly establish and administer a common fund.

(d) The fund administrator shall have the following powers and duties:

(1) to make loans to owners of real property to finance or refinance the costs of energy conservation and renewable energy projects on their properties; provided, however, that no loan shall be made unless an energy audit of the property has been conducted on or after July 2, 2008, and any energy conservation measures established by the fund administrator for participation in the program have been implemented;

(2) to execute and deliver on behalf of the city or town all loan agreements and other instruments necessary or proper to make the loan and secure its repayment;

(3) to record the notice of the agreement required by subsection (f) and any other loan instruments;

(4) to apply for and accept grants or gifts for purposes of the fund; and

(5) to exercise any other powers or perform any other duties that the city or town may grant by ordinance or by-law to carry out this section.

(e) The city or town treasurer shall be the custodian of the fund, which shall be maintained as a separate account and into which shall be deposited:

(1) all monies appropriated and all proceeds from bonds issued under clause (3C) of the first paragraph of section 7 for purpose of providing loans to private property owners for energy conservation and renewable energy projects;

(2) all funds received from the commonwealth or any other source for those purposes;

(3) all repayments of the loans made by property owners under this section and any reserve or other required payments made by the owners in connection with the loans; and

(4) any other amounts required to be credited to the fund by any law.

The city or town treasurer may invest the monies in the manner authorized in section 55 and any interest earned thereon shall be credited to and become part of the fund.

The city or town treasurer shall annually certify, not later than June 30, in writing to the fund administrator and auditor or similar officer in cities or the town accountant in towns having a town accountant, the principal and interest due in the next fiscal year on any bonds issued under clause (3C) of the first paragraph of section 7 and not otherwise provided for, and the amount certified shall be reserved for payment of that debt service without further appropriation. Loans may be made from the fund by the fund administrator without further appropriation, subject to this section; provided, however, that no loans shall be made or liabilities incurred in excess of the unreserved fund balance and unless approved in accordance with sections 52 and 56 of chapter 41.

(f) Whenever a city or town enters into a loan agreement with a property owner under this section, a notice of the agreement shall be recorded as a betterment and shall be subject to chapter 80 relative to the apportionment, division, reassessment and collection of assessment, abatement and collections of assessments, and to interest; provided, however, that for purposes of this section, the lien shall take effect by operation of law on the day immediately following the due date of the assessment or apportioned part of the assessment and the assessment may bear interest at a rate determined by the city or town treasurer by agreement with the owner at the time the agreement is entered into between the city or town and the property owner. In addition to remedies available under said chapter 80, the property owner shall be personally liable for the repayment of the total costs incurred by the city or town under this section; provided, however, that upon assumption of the personal obligation by a purchaser or other transferee of all of the original owner's interest in the property at the time of conveyance and the recording of the assumption, the owner shall be relieved of the personal liability.

A betterment loan agreement between an owner and a city or town under this section shall not be considered a breach of limitation or prohibition contained in a note, mortgage or contract on the transfer of an interest in property.

Notwithstanding any provision of chapter 183A to the contrary, the organization of unit owners of a condominium may enter into a betterment loan agreement under this section to finance an energy conservation and renewable energy project, provided that the project comprises part of the common areas and facilities; provided, however, that section 18 of said chapter 183A shall not apply to any improvements undertaken pursuant to an agreement entered into under this section. Such agreement shall: (i) be approved by a majority of the unit owners benefited by the project; (ii) include an identification of the units and unit owners subject to the agreement and the percentages, as set forth in the master deed, of the undivided interests of the respective units in the common area and facilities; and (iii) include a statement by an officer or trustee of the organization of unit owners certifying that the required number of unit owners have approved the agreement. As between the affected unit owners and the city or town, the certification shall be conclusive evidence of the authority of the organization of unit owners to enter into the agreement. A notice of the agreement shall be recorded as a betterment in the registry of deeds or registry district of the land court wherein the master deed is recorded and shall be otherwise subject to chapter 80 as provided in this section. The assessment under the agreement shall be charged or assessed directly to the benefited unit owners and if unpaid shall be added to the annual tax bill for their units in accordance with section 13 of said chapter 80. The allocable share of the assessment, prorated on the basis of the percentage interests of the benefited units in the common areas and facilities, shall attach as a lien only to the units identified in the recorded notice and benefited by the project and the owners of those units shall also be personally liable for their allocable share of the assessment as provided for in this section. For the purposes of this paragraph, the terms "common areas and facilities", "common expenses", "condominium", "master deed", "organization of unit owners", "units" and "unit owners" shall have the same meanings as ascribed to them in section 1 of said chapter 183A.

(g) The fund administrator shall file annually, not later than June 30, a report detailing the amount of money in the fund, loans made and repayments received, and shall also include the types of projects financed. The report shall be filed with the chief executive officer of the city or town, the executive office of administration and finance, the joint committee on municipalities and regional government, the senate and house committees on ways and means and the clerks of the senate and the house of representatives.

Added by St.2010, c. 188, § 36, eff. July 27, 2010.

§ 53F. Deposits of public funds in banking institutions in return for banking services

Notwithstanding any general or special law to the contrary, a treasurer or collector of a city, town or district is authorized to enter into written agreements for a period not to exceed three years, with banking institutions having their principal offices in the commonwealth, pursuant to which such treasurer or collector agrees to maintain on deposit in said institutions specified amounts of the funds of the municipality in return for said institutions providing banking services. The type of services that so qualify shall be prescribed by the commissioner of revenue.

Such agreements shall be in a form approved by said commissioner and shall contain such terms and conditions as he may deem appropriate to ensure fiscal stability and full disclosure. Each such agreement shall include the total amount that may be required to be on deposit at all times; and, if said amount may vary from time to time, every such agreement shall specify a minimum total amount that may be required to be on deposit at any time. If the city, town or district fails to maintain the agreed amount on deposit, the city, town or district shall not be authorized to appropriate funds for such purpose.

No such agreement shall be effective unless and until it has been approved in a town having a town council, by the town council; in a city by the city council and the mayor if required by law; in a regional school district, by the regional school committee; and in any other district, by the district meeting. With respect to any other town, no such agreement shall be effective unless and until the town meeting has authorized its treasurer or collector to enter into such agreements under the provisions of this section during the fiscal year in which such agreement takes effect and such agreement has been approved by the selectmen of such town.

Said commissioner shall promulgate, and from time to time revise, reasonable rules, regulations, standards and guidelines necessary to promote prudent fiscal management and to ensure that such

agreements are not utilized to circumvent the appropriation process or other provisions of law.

As used in this section, "district" shall include a regional school district.

A treasurer or collector who has entered into an agreement pursuant to this section shall file with the commission, in such form and at such time as the commissioner shall prescribe, such information as the commissioner shall require in order to determine whether funds maintained on deposit with a banking institution have exceeded the amount required by said agreement. The commissioner shall report annually on agreements maintained pursuant to this section. Such report shall identify, for each city, town or district maintaining such agreement, each banking institution with which such agreement was maintained in the year covered by the report, and the average daily amount, if any, maintained on deposit with such banking institution in excess of the amount necessary to fulfill the terms of agreement. A copy of such report shall be provided to the collector or treasurer, the mayor and city council, the selectmen, the regional school committee, the prudential committee, if any, otherwise the commissioners, of each city, town, or district named therein, and a copy of the same shall be furnished to the inspector general.

Added by St.1985, c. 740, § 1. Amended by St.1989, c. 454.

§ 53F½. Enterprise funds

Notwithstanding the provisions of section fifty-three or any other provision of law to the contrary, a city or town which accepts the provisions of this section may establish a separate account classified as an "Enterprise Fund", for a utility, health care, recreational or transportation facility, and its operation, as the city or town may designate, hereinafter referred to as the enterprise. Such account shall be maintained by the treasurer, and all receipts, revenues and funds from any source derived from all activities of the enterprise shall be deposited in such separate account. The treasurer may invest the funds in such separate account in the manner authorized by sections fifty-five and fifty-five A of chapter forty-four. Any interest earned thereon shall be credited to and become part of such separate account. The books and records of the enterprise shall be maintained in accordance with generally accepted accounting principles and in accordance with the requirements of section thirty-eight.

No later than one hundred and twenty days prior to the beginning of each fiscal year, an estimate of the income for the ensuing fiscal year and a proposed line item budget of the enterprise shall be submitted to the mayor, board of selectmen or other executive authority of the city or town by the appropriate local entity responsible for operations of the enterprise. Said board, mayor or other executive authority shall submit its recommendation to the town meeting, town council or city council, as the case may be, which shall act upon the budget in the same manner as all other budgets.

The city or town shall include in its tax levy for the fiscal year the amount appropriated for the total expenses of the enterprise and an estimate of the income to be derived by the operations of the enterprise. If the estimated income is less than the total appropriation, the difference shall be added to the tax levy and raised by taxation. If the estimated income is more than the total appropriation, the excess shall be appropriated to a separate reserve fund and used for capital expenditures of the enterprise, subject to appropriation, or to reduce user charges if authorized by the appropriate entity responsible for operations of the enterprise. If during a fiscal year the enterprise incurs a loss, such loss shall be included in the succeeding fiscal year's budget.

If during a fiscal year the enterprise produces a surplus, such surplus shall be kept in such separate reserve fund and used for the purposes provided therefor in this section.

For the purposes of this section, acceptance in a city shall be by vote of the city council and approval of the mayor, in a town, by vote of a special or annual town meeting and in any other municipality by vote of the legislative body.

A city or town which has accepted the provisions of this section with respect to a designated enterprise may, in like manner, revoke its acceptance.

Added by St.1990, c. 177, § 129.

§ 53G. Employment of outside consultants

Notwithstanding section 53, any city or town that provides by rules promulgated under section 9 or 12 of chapter 40A, section 21 of chapter 40B, section 81Q of chapter 41 or section 31 of chapter 111, or by rules promulgated by a conservation commission established by a city or town under section 8C of chapter 40 when implementing the authority conferred under said section 8C of said chapter 40, section 40 of chapter 131, or under any local wetlands ordinance or by-law, for the imposi-

tion of reasonable fees for the employment of outside consultants may deposit such fees in a special account. Such rules shall provide for an administrative appeal from the selection of the outside consultant to the city council or town board of selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The required time limits for action upon an application by a municipal permit granting board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the city council or the town board of selectmen within one month following the filing of the appeal, the selection made by the municipal permit granting authority shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section. Any such account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. The special account, including accrued interest, if any, shall be expended at the direction of the authorized board or authority without further appropriation; provided, however, that such funds are to be expended by it only in connection with carrying out its responsibilities under the law. Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest. The municipal accountant shall submit annually a report of said special account to the chief elected body and chief administrative official of the municipality for their review. Said report shall be published in the city or town annual report. The municipal accountant shall submit annually a copy of said report to the director of the bureau of accounts.

Added by St.1989, c. 593, § 2. Amended by St.2003, c. 46, § 36, eff. July 31, 2003; St.2006, c. 131, eff. Sept. 26, 2006.

§ 53H. Rebate to federal government to exclude interest paid on bonds from gross income

Notwithstanding the provisions of section fifty-three, any city, town, district, regional refuse disposal district or regional school district issuing bonds or notes may rebate to the federal government, without further appropriation, any amount deemed necessary by the officers authorized to issue the bonds or notes in order to have interest paid on the bonds or notes be excluded, in whole or in part, from gross income for federal income tax purposes. Such payment made by a city, town or district shall be reported by the auditor or accountant of the city or town or other officer having similar duties or by the treasurer, if there is no such officer, to the assessors, who shall include the amount so reported in the determination of the next annual tax rate, unless the city, town or district has otherwise made provisions therefor. The amount of such payment made by a regional school district or regional refuse disposal district shall be included in the next annual district operation and maintenance budget, unless the regional district committee has otherwise made provisions therefor. The director of accounts may promulgate guidelines, rules and regulations to govern such rebates and any such rebates made under authority of this section shall be subject to any such guidelines, rules and regulations of said director.

Added by St.1989, c. 594, § 5.

§ 53*I*. Settlement or incorporation celebrations; special fund

A city or town, for the celebration of the two hundredth, two hundred and fiftieth, three hundredth and three hundred and fiftieth anniversary of its settlement or incorporation, may appropriate money annually during the five years preceding such anniversary. Notwithstanding the provisions of section fifty-three or any other law to the contrary, such city or town may establish in its treasury a special fund in which shall be deposited such sums as may be appropriated by it under the provisions of this section, and any and all sums received from the sale of commemorative items or from admission charges for commemorative ceremonies or events. Any and all such sums received by the treasurer shall be kept separate from other moneys, funds or property of such city or town and the principal and interest thereof may, from time to time upon the authorization of the mayor or city manager, as the case may be, the board of selectmen or the majority of any special committee established to plan such celebration, be expended for the purposes of said celebration in the year of such celebration and in the year preceding or succeeding the same. Any surplus remaining in said spe-

cial fund after such celebration is concluded, shall be transferred by such treasurer into the treasury of such city or town.
Added by St.1993, c. 198.

§ 54. Investment of trust funds

Trust funds, including cemetery perpetual care funds, unless otherwise provided or directed by the donor thereof, shall be placed at interest in savings banks, trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Insurance Corporation, or national banks, or invested by cities or towns in participation units in a combined investment fund under section thirty-eight A of chapter twenty-nine, or in paid-up shares and accounts of and in co-operative banks, or in shares of savings and loan associations or in shares or savings deposits of federal savings and loan associations doing business in the commonwealth to an amount not exceeding one hundred thousand dollars, or in bonds or notes which are legal investments for savings banks. Cities and towns having such funds in the custody of the treasurer in an aggregate amount in excess of two hundred and fifty thousand dollars may also invest such funds in securities, other than mortgages or collateral loans, which are legal for the investment of funds of savings banks under the laws of the commonwealth; provided, that not more than fifteen per cent of any such trust funds shall be invested in bank stocks and insurance company stocks, nor shall more than one and one-half per cent of such funds be invested in the stock of any one bank or insurance company. This section shall not apply to the city of Boston.
Amended by St.1933, c. 200; St.1946, c. 358, § 24; St.1948, c. 194, § 1; St.1949, c. 243; St.1953, c. 83; St.1954, c. 47; St.1962, c. 257; St.1970, c. 53; St.1971, c. 299; St.1977, c. 51; St.1979, c. 98, § 1; St.1980, c. 15; St.1982, c. 52.

Historical and Statutory Notes

St.1913, c. 719, §§ 1, 17.
St.1916, c. 101.

§ 55. Public funds on deposit; limitations; investments

A city, town, or district or regional school district shall not at any one time have on deposit in a bank or trust company or banking company an amount exceeding sixty per cent of the capital and surplus of such bank or trust company or banking company, unless satisfactory security is given to it by such bank or trust company or banking company for such excess. The treasurer of any city, town, district or regional school district shall not deposit funds for which he is accountable in any bank, trust company or banking company with which such treasurer is associated as an officer or employee or has been associated as an officer or employee at any time during the three years immediately preceding the date of any such deposit. For the purpose of paying the principal or interest due on any bond, note or other obligation of the city of Boston, which is payable or requested to be paid in the city of New York, the city of Boston may keep on deposit in any national bank or trust company in the city of New York a sum not exceeding in the aggregate twenty-five thousand dollars; provided, that for a period of two weeks prior to the date of any such payment or payments, said amount may be increased by a sum or sums sufficient to cover the same. A treasurer of a city, town, district or regional school district may invest such portion of revenue cash as he shall deem not required to pay expenses until such cash is available and all or any part of the proceeds from the issue of bonds or notes, prior to their application to the payment of liabilities incurred for the purposes for which the bonds or notes were authorized, in term deposits or certificates of deposit, in trust companies, national banks, savings banks, banking companies or cooperative banks, or in obligations issued or unconditionally guaranteed by the United States government or any agency thereof and having a maturity from date of purchase of one year or less, or in United States government securities or securities of United States government agencies purchased under an agreement with a trust company, national bank or banking company to repurchase at not less than the original purchase price of said securities on a fixed date, not to exceed ninety days or in shares of beneficial interest issued by money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, operated in accordance with Section 270.2a–7 of Title 17 of the Code of Federal Regulations, that have received the highest possible rating from at least one nationally recognized statistical rating organization and the purchase price of shares of beneficial interest purchased pursuant to this section shall not include any commission that these companies may charge, or in participation units in a combined investment fund under section thirty-eight A of chapter twenty-nine; provided, however, that no temporary notes in anticipation of revenue

shall be issued under section four as long as any revenue cash, exclusive of revenue sharing or other revenue cash the use of which is restricted to purposes other than current maintenance expenses, remain so invested.

Amended by St.1948, c. 143, § 1; St.1951, c. 59; St.1953, c. 103; St.1960, c. 253; St.1960, c. 592, § 4; St.1967, c. 46, § 9; St.1967, c. 91; St.1971, c. 545; St.1973, c. 224; St.1974, c. 90; St.1974, c. 548; St.1975, c. 248; St.1976, c. 128; St.1979, c. 782, § 2; St.1982, c. 134; St.1987, c. 257; St.1996, c. 314.

Historical and Statutory Notes

St.1893, c. 266.
R.L.1902, c. 25, § 19.
St.1921, c. 486, § 13.

§ 55A. Liability of depositor for losses due to bankruptcy

A city, town, district or regional school district officer receiving public money and lawfully and in good faith and in the exercise of due care depositing the same in a savings bank or trust company organized under the laws of the commonwealth, on paid-up shares and accounts of and in cooperative banks, a banking company organized under the laws of the commonwealth which is a member of the Federal Deposit Insurance Corporation, or in a national bank doing business in the commonwealth or in participation units in a combined investment fund under section thirty-eight A of chapter twenty-nine, or, in the case of the city of Boston, in accordance with the provisions of section fifty-five in a national bank or trust company in the city of New York, or in good faith and in the exercise of due care purchasing share accounts of a federal savings and loan association located in the commonwealth, shall not be personally liable to the city, town, district or regional school district for any loss of such money by reason of the closing up of such depository or federal and loan association [1] for the liquidation of its affairs.

Amended by St.1948, c. 143, § 2; St.1948, c. 194, § 2; St.1950, c. 224; St.1954, c. 48; St.1978, c. 83; St.1980, c. 366.

[1]So in enrolled bill.

Historical and Statutory Notes

St.1929, c. 81.

§ 55B. Investment of public funds

All moneys held in the name of a city, town, district or regional school district or any other account under the jurisdiction of a city, town, district, or regional school district or officer thereof, which are not required to be kept liquid for purposes of distribution, shall be invested in such a manner as to require the payment of interest on the money at the highest possible rate reasonably available, taking account of safety liquidity and yield. All officers of a city, town district or regional school district who control the investment of such funds shall invest them prudently, consistent with the provisions of sections fifty-four and fifty-five and, if the funds are the result of gift or grant or bequest, the terms of such gift or grant or bequest, so as to accrue the highest amount of interest reasonably available on such funds taking account of safety, liquidity and yield. The provisions of section sixty-two shall not apply to this section.

Added by St.1985, c. 740, § 2.

§ 55C. Municipal Affordable Housing Trust Fund

(a) Notwithstanding section 53 or any other general or special law to the contrary, a city or town that accepts this section may establish a trust to be known as the Municipal Affordable Housing Trust Fund, in this section called the trust. The purpose of the trust is to provide for the creation and preservation of affordable housing in municipalities for the benefit of low and moderate income households. Acceptance shall be by majority vote of the municipal legislative body under section 4 of chapter 4.

(b) There shall be a board of trustees, in this section called the board, which shall include no less than 5 trustees, including the chief executive officer, as defined by section 7 of chapter 4, of the city or town, but where the chief executive officer is a multi-member body, that body shall designate a minimum of 1 of its members to serve on the board. Trustees shall be appointed in a city by the mayor or by the city manager in a Plan D or Plan E municipality, subject in either case, to confirmation by the city council, and in a town by the board of selectmen, shall serve for a term not to exceed 2 years, and are designated as public agents for purposes of the constitution of the commonwealth. Nothing in this subsection shall prevent a board of selectmen from appointing the town manager or town administrator as a member or chair of the board, with or without the power to vote.

(c) The powers of the board, all of which shall be carried on in furtherance of the purposes set forth in this act, shall include the following powers, but a city or town may, by ordinance or by-law, omit or modify any of these powers and may grant to the

board additional powers consistent with this section:—

(1) to accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or by-law or any general or special law or any other source, including money from chapter 44B;

(2) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;

(3) to sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the board deems advisable notwithstanding the length of any such lease or contract;

(4) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;

(5) to employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary;

(6) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;

(7) to apportion receipts and charges between incomes and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;

(8) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;

(9) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;

(10) to carry property for accounting purposes other than acquisition date values;

(11) to borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral;

(12) to make distributions or divisions of principal in kind;

(13) to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the board may deem appropriate;

(14) to manage or improve real property; and to abandon any property which the board determined not to be worth retaining;

(15) to hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and

(16) to extend the time for payment of any obligation to the trust.

(d) Notwithstanding any general or special law to the contrary, all moneys paid to the trust in accordance with any zoning ordinance or by-law, exaction fee, or private contributions shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and to be expended these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within 1 year of the date they were appropriated into the trust, remain trust property.

(e) The trust is a public employer and the members of the board are public employees for purposes of chapter 258.

(f) The trust shall be deemed a municipal agency and the trustees special municipal employees, for purposes of chapter 268A.

(g) The trust is exempt from chapters 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the commonwealth or any political subdivision thereof.

(h) The books and records of the trust shall be audited annually by an independent auditor in accordance with accepted accounting practices.

(i) The trust is a governmental body for purposes of sections 23A, 23B and 23C of chapter 39.

(j) The trust is a board of the city or town for purposes of chapter 30B and section 15A of chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city or town shall be exempt from said chapter 30B.

Added by St.2004, c. 491, § 1, eff. April 7, 2005. Amended by St.2006, c. 109, §§ 1 to 6, eff. Sept. 11, 2006.

§ 56. Towns; fiscal year

The fiscal year of all towns of the commonwealth shall begin with July first and end with the following June thirtieth, and the returns made to the director under section forty-three shall show the financial condition of the town at the close of business on June thirtieth; provided, however, that the treasurer shall, until July fifteenth, enter in his books all items for the payment of bills incurred and salaries and wages earned during the previous fiscal year, excepting payment of school teachers' salaries which have been deferred under the provisions of section forty of chapter seventy-one, and expenditures thereof shall be deemed to be as of June thirtieth preceding.

Amended by St.1969, c. 849, § 62 as amended by St.1971, c. 766, § 16; St.1973, c. 52, § 13; St.1991, c. 138, § 228; St.1991, c. 223, § 1.

Historical and Statutory Notes

St.1913, c. 692, § 1.
St.1926, c. 111.

§ 56A. Cities; fiscal year

The fiscal year of all cities of the commonwealth shall begin with July first and end with the following June thirtieth, notwithstanding the provisions of their respective charters, and the returns made to the director under section forty-three shall show the financial condition of the city at the close of business on June thirtieth; provided, however, that the treasurer shall, until July fifteenth, enter in the books all items for the payment of bills incurred and the salaries and wages earned during the previous fiscal year, excepting payment of school teachers' salaries which have been deferred under the provisions of section forty of chapter seventy-one, and the expenditures therefor shall be deemed to be as of June thirtieth preceding.

Added by St.1934, c. 229, § 1. Amended by St.1969, c. 849, § 63 as amended by St.1971, c. 766, § 17; St.1973, c. 52, § 14; St.1991, c. 138, § 229; St.1991, c. 223, § 2.

§ 57. Taxation; interest on debts incurred in aid of a railroad

A city or town owing debts incurred in aid of a railroad corporation shall annually raise by taxation an amount sufficient, with the income, if any, derived from its stock or securities, to pay the interest on such debts.

Historical and Statutory Notes

P.S.1822, c. 29, §§ 20 to 22.
St.1876, c. 133.
R.L.1902, c. 27, § 24.

§ 58. Cities and towns; limitation on purchasing powers

No city or town shall pay a bill incurred by any official thereof for wines, liquors or cigars.

Amended by St.1951, c. 15.

Historical and Statutory Notes

St.1884, c. 320, § 13.
R.L.1902, c. 19, § 33.
St.1917, c. 17.

§ 59. Enforcement of chapter

The supreme judicial or superior court, by mandamus or other appropriate remedy, at law or in equity, upon the suit or petition of the attorney general or of the mayor, or of one or more taxable inhabitants of a city, town or district authorized by law to incur debt, or of any creditor to whom it is indebted to an amount not less than one thousand dollars, may compel such city, town or district, and its assessors, collectors, treasurers, commissioners of sinking funds and other proper officers, to conform to this chapter.

Historical and Statutory Notes

St.1875, c. 209, § 11.
P.S.1882, c. 29, § 17.
St.1885, c. 312, § 5.
R.L.1902, c. 27, § 26.
St.1913, c. 719, §§ 1, 21.

§ 60. Penalty for violation of law controlling handling of town and district notes

A town treasurer or a treasurer of a district, who violates any provision of sections twenty-three to twenty-five, inclusive, shall be punished by a fine of not less than one hundred nor more than five hundred dollars.

Amended by St.1967, c. 46, § 10.

Historical and Statutory Notes

St.1910, c. 616, § 5.
St.1913, c. 727, § 6.
St.1918, c. 257, § 159.
St.1919, c. 5.
St.1920, c. 2.

§ 61. Penalty for refusal to issue bond in exchange for bearer instruments in sinking funds

A county, city, town, district or corporation which neglects or refuses to issue a bond, note or certificate in accordance with section fifty-two when requested so to do by the sinking fund commissioners of any city, town or district shall be subject to a penalty of not more than fifty dollars.

Historical and Statutory Notes

St.1912, c. 377 § 2.
St.1915, c. 85, § 4.

§ 62. Penalty for violation of provisions of chapter by officials

Any city, town or district officer who knowingly violates, or authorizes or directs any official or employee to violate, any provision of this chapter, or any other provision of general law relating to the incurring of liability or expenditure of public funds on account of any city, town or district, or any provision of special law relating to the incurring of liability or expenditure of public funds as aforesaid, shall, except as otherwise provided, be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both; and the mayor, selectmen, prudential committee, or commissioners, shall, and five taxpayers may, report such violation to the district attorney who shall investigate and prosecute the same.

Historical and Statutory Notes

St.1922, c. 253.
St.1926, c. 248.

§ 63. Sale or other disposal of realty; disposition of proceeds

Whenever the proceeds of the sale or other disposal of real estate, including the taking by eminent domain by another governmental unit, but other than that acquired through tax title foreclosure, by a city, town, or district, exceed five hundred dollars, the same shall be applied to the payment of indebtedness incurred in acquiring such real estate or shall be added to the sinking fund, if any, from which said indebtedness is payable, or if no such indebtedness is outstanding may be used for any purpose or purposes for which the city, town or district is authorized to incur debt for a period of five years or more or be applied to the payment of indebtedness incurred under clause (3) of section seven, except that the proceeds of a sale in excess of five hundred dollars of any park land by a city, town, or district shall be used only by said city, town, or district for acquisition of land for park purposes or for capital improvements to park land.

Amended by St.1946, c. 358, § 25; St.1962, c. 377; St.1966, c. 111; St.1983, c. 398; St.1987, c. 456.

Historical and Statutory Notes

St.1923, c. 303, § 4.

§ 63A. Sales of public land; payment of taxes

Whenever in any fiscal year a town, which term, as used in this section, shall include a city, shall sell any real estate, the board or officer executing the deed therefor in the name and behalf of the town shall, as a condition precedent to the power to deliver such deed, receive from the grantee as a payment in lieu of taxes allocable to the days ensuing in said fiscal year after the date of such deed, a sum which shall be equal to such portion of a pro forma tax computed as hereinafter provided as would be allocable to the days aforesaid if such pro forma tax were apportioned pro rata according to the number of days in such fiscal year; provided, however, that whenever the said real estate shall be sold between January second and June thirtieth of the fiscal year, the town shall also receive an additional amount equal to the entire pro forma tax computed as hereinafter provided and allocable as a payment in lieu of taxes for the next succeeding fiscal year. Such pro forma tax shall be computed by applying the town's tax rate for the fiscal year of the sale, or, if such rate is not known, the town's tax rate for the fiscal year next preceding that of the sale, to the sale price after crediting any exemption to which, if the deed had

been executed and delivered on January first of such next preceding fiscal year, the grantee would have been entitled under section five of chapter fifty-nine. A recitation in the deed that there has been full compliance with the provisions of this section shall be conclusive evidence of such fact. Sums received under this section shall not be subject to section sixty-three of this chapter or to section forty-three of chapter sixty, but shall be credited as general funds of the town.

Added by St.1955, c. 247. Amended by St.1969, c. 849, § 63A as added by St.1971, c. 766, § 18; St.1983, c. 72, § 1.

§ 64. Payment of bills incurred in excess of appropriations

Any town or city having unpaid bills of previous fiscal years which may be legally unenforceable due to the insufficiency of an appropriation in the fiscal year in which such bills were incurred may, in the case of a town, at an annual meeting by a four fifths vote, or at a special meeting by a nine tenths vote, of the voters present and voting at a meeting duly called, and, in the case of a city which accepts this section, by a two thirds vote of the city council, appropriate money to pay such bills; but no bill or payroll shall be approved for payment or paid from an appropriation voted under authority of this section unless and until certificates have been signed and filed with the selectmen or the city auditor, as the case may be, as hereinafter provided, stating under the penalties of perjury that the goods, materials or services for which bills have been submitted were ordered by an official or employee of the town or city and that such goods and materials were delivered and actually received by the town or city or that such services were rendered to or for the town or city, as the case may be.

Every such certificate that goods, materials or services were so ordered shall be signed and filed by the official or employee of the town or city who ordered the same or, if he has ceased to be an official or employee of the town or city, by any official or employee of the town or city; every such certificate of delivery to the town or city of goods or materials shall be signed and filed by the vendor thereof or, if such vendor is a corporation, shall be signed and filed by the treasurer thereof; every such certificate that goods or materials were received by the town or city shall be signed and filed by an official or employee of the town or city; and every such certificate of services rendered to or for a town or city shall be signed and filed by the person who rendered such services.

This section shall not prohibit or prevent appropriations by a majority vote for bills or obligations of previous fiscal years due to any other town or to a district, a city, a county or the commonwealth, or for legally incurred debt and interest the payment of which is provided for by any general or special law.

This section shall apply to districts.

Added by St.1941, c. 179. Amended by St.1960, c. 592, § 5; St.1969, c. 505, § 8; St.1969, c. 730; St.1969, c. 849, § 63B as added by St.1971, c. 766, § 18; St.1975, c. 284.

§ 65. Vacation pay; advances to employees

In any city which accepts this section by vote of the city council, with the approval of the mayor, and in any town which accepts this section at a town meeting, advances of pay may be made to any officer or employee thereof in advance of his regular vacation to the extent of the pay to which he is about to be entitled during such vacation period under such regulations as the city or town treasurer may prescribe.

Added by St.1945, c. 635, § 3.

§ 66. Advances to public employees

In any city having a plan E or plan D charter with the approval of the city manager, in any other city with the approval of the mayor, and in towns with the approval of the selectmen, advances may be made to any officer or employee thereof in anticipation of necessary expenses authorized to be incurred under the provisions of clause (34) of section five of chapter forty subject, however, to such regulations as the treasurer thereof shall from time to time prescribe.

Added by St.1956, c. 21.

§ 67. Deferred compensation program for employees; authorized investments; requisites; limitations

The treasurer of any city or town, on behalf of the city or town, may contract with an employee to defer a portion of that employee's compensation and may, for the purposes of funding a deferred compensation program for said employee, established in accordance with the U.S. Internal Revenue Code (the "Code"), invest the deferred portion of the employee's income in a life insurance or annuity contract, mutual fund, or a bank invest-

ment trust. If the employee is a director, administrative officer of a department, city or town manager, or executive secretary, or a similar professional or scientific employee, the treasurer of a city or town may, at the election of the employee, for the purpose of funding a deferred compensation program for said employee, invest the deferred portion of the employee's income in either a plan containing the options provided for in the previous sentence or in a contract, trust or program maintained by a nonprofit organization classified as tax-exempt by the United States Internal Revenue Service whose holdings consist of tax-exempt government securities. The treasurer shall, before making any such investment, solicit bids from insurance companies authorized to conduct business within the commonwealth pursuant to chapter one hundred and seventy-five, mutual fund managers, and banks, which bids shall be sealed, and opened at a time and place designated by the treasurer. Any bid submitted by an insurance company, mutual fund, or bank investment trust to fund the deferred compensation program shall, where applicable, clearly indicate the interest rate which shall be paid on the deferred funds, any commissions which will be paid to the salesmen, any load imposed for the purpose of administering the funds, mortality projections, expected payouts, tax implications for participating employees and such other information as the treasurer may require. Any contract entered into between an employee and the city or town pursuant to this section shall include all such information in terms the employee can reasonably be expected to understand.

As used in this section the word "employee" shall have the same meaning as "employee" in section one of chapter thirty-two and shall also include consultants and independent contractors who are natural persons paid by the city or town.

Notwithstanding any provisions herein to the contrary, the treasurer shall not be required to solicit bids to invest the deferred portion of an employee's income provided: (a) the treasurer elects to invest such funds in the same investment products as provided through the deferred compensation plan for employees of the commonwealth administered by the state treasurer, provided such plan resulted from the solicitation of bids in accordance with bidding requirements comparable to those required under this section; or (b) the treasurer elects to invest such funds in the investment products offered pursuant to a plan developed through a competitive selection process, provided that such plan resulted from the solicitation of bids by a group of any combination of three or more city, town, county or public authority treasurers acting as a "Common Group" for purposes of soliciting such proposals in accordance with bidding requirements comparable to those required under this section.

An employee may defer compensation so long as such deferral is the lesser of seven thousand five hundred dollars or thirty-three and one-third per cent of his includible compensation for a taxable year, except that for one or more of the last three taxable years ending before he attains normal retirement age under the plan, the employee may defer the lesser of fifteen thousand dollars or the sum of (1) seven thousand five hundred dollars or thirty-three and one-third per cent of his includible compensation for a such year, plus (2) a sum not more than the total deferrable compensation for prior taxable years that had not in fact been deferred in such years.

Such deferred compensation program shall be in addition to and not a part of the retirement program or pension system as provided under said chapter thirty-two and any other benefit program provided by law for such employee. Any compensation deferred under such a plan shall continue to be included as regular compensation, as defined in section one of said chapter thirty-two, for the purpose of computing the retirement and pension benefits earned by any such employee, but any compensation so deferred shall not be included in the computation of any taxes withheld on behalf of any such employee.

Added by St.1972, c. 807, § 5. Amended by St.1976, c. 422, § 6; St.1978, c. 341; St.1981, c. 731, § 3.

§ 67A. Employee individual retirement accounts

The treasurer of any city or town, on behalf of the city or town, may contract with an employee to make contributions for and in the name of such employee, from amounts otherwise payable to the employee as current compensation, to an Individual Retirement Account ("IRA") by such employee established in accordance with the U.S. Internal Revenue Code, (the "Code"). The participating employee may invest that portion of his income so contributed to an IRA in an annuity contract, mutual fund, bank investment trust or other investment authorized by the Code. Before making such deduction, the treasurer shall be required to solicit bids from insurance companies authorized to con-

duct business within the commonwealth pursuant to chapter one hundred and seventy-five, mutual fund managers, and banks which bids shall be sealed, and opened at a time and place designated by the treasurer. Any bid submitted by an insurance company, mutual fund, or bank investment trust seeking investment of the IRA contribution shall, where applicable, clearly indicate the interest rate which shall be paid on the invested funds, any commissions which will be paid to the salesmen, any load imposed for the purpose of administering the funds, expected payouts, tax implications for participating employees and such other information as the treasurer may require. Upon the treasurer's determining which provider offers the product or products most beneficial to the employee in each category for which bids were solicited, the treasurer may offer such employee the opportunity to establish an IRA with one or more such providers. The employee who wishes to invest his IRA funds with any such provider, or combination of providers, may authorize the treasurer to deduct from amounts otherwise payable to the employee, at one time or on a periodic basis, amounts to be paid into the employee's IRA. If the employee so elects, the treasurer shall pay to the providers the amount designated by the employee, in the name of the employee, to the employee's IRA. Amounts so paid to the providers for the employee's IRA account shall belong exclusively to the employee. Except as otherwise provided herein, the treasurer may restrict an employee's right to contract to have contributions made to an IRA through deductions and payments by the treasurer, to those providers selected as the result of the competitive bidding process outlined herein, but the authority conferred upon the treasurer shall not be construed to restrict or limit the right of any employee to establish one or more IRAs with such banks, insurance companies, or similar authorized institutions as the employee may choose in any manner other than through an authorized deduction by the treasurer of a portion of the employees compensation as outlined herein. Any contract entered into between an employee and the city or town pursuant to this section shall include all information in terms the employee can reasonably be expected to understand.

As used in this section the word "employee" shall have the same meaning as "employee" in section one of chapter thirty-two and shall also include consultants and independent contractors who are natural persons paid by the city or town.

An employee may contribute a portion of his compensation to an IRA under the program outlined herein so long as such contribution, for an employee who is single, is the lesser of two thousand dollars or one hundred per cent of his compensation for a taxable year, and, for an employee who is married, the contribution is the lesser of two thousand two hundred and fifty dollars or one hundred per cent of his compensation for a taxable year, such dollar amount and such percentage of compensation to be automatically adjusted to reflect any applicable amendments to the Code adopted from time to time. If an employee has any compensation deferred under a deferred compensation plan for employees of the city or town, if one is established by the treasurer under section sixty-seven, then the aggregate amount of such deferred compensation deduction and amounts contributed to such employee's IRA shall not exceed the limits imposed upon such combined deduction and contribution by the Code.

Notwithstanding any provisions to the contrary, the treasurer shall not be required to solicit bids to invest the contributed portion of an employee's income into the employee's IRA provided: (a) the treasurer is authorized by the employee to pay that portion of the employee's compensation into the employee's IRA in the same investment products as provided through a deferred compensation or IRA plan for employees of the commonwealth administered by the state treasurer, or a deferred compensation plan for employees of the city or town administered by the treasurer, provided such plan resulted from the solicitation of bids in accordance with bidding requirements comparable to those required under this section; or (b) the treasurer is authorized by the employee to pay that portion of the employee's compensation into the employee's IRA in the investment products offered pursuant to a deferred compensation or IRA plan developed through a competitive selection process, provided that such plan or program resulted from the solicitation of bids by a group of any combination of three or more city, town, county or public authority treasurers acting as a "Common Group" for purposes of soliciting such proposals in accordance with bidding requirements comparable to those required under this section.

Such IRA plan shall be in addition to and not a part of the retirement program or pension system as provided under said chapter thirty-two and any other benefit program provided by law for such employee. Any compensation contributed by the

employee to his IRA under such a plan shall continue to be included as regular compensation, as defined in section one of said chapter thirty-two, for the purpose of computing the retirement and pension benefits earned by any such employee, but any compensation so contributed shall not be included in the computation of federal taxes but shall be included in the computation of state taxes withheld on behalf of any such employee.
Added by St.1981, c. 731, § 3.

§ 68. Retroactive salary increases

Whenever a city, town or district votes to grant a salary increase to all or any of its employees, such increase may be retroactive to a date not earlier than the beginning of the fiscal year prior to the date of such vote.
Added by St.1973, c. 47.

§ 69. Municipal or district services, fees or charges; insufficient funds checks; penalty

If a check in payment of a municipal or district service rendered or fee or charge imposed is not duly paid, there may, in addition to any other penalty provided by law, be imposed on the person who tendered such check, upon notice and demand by the city, town or district treasurer, a penalty in the same amount as that imposed under the provisions of section fifty-seven A of chapter sixty.

Any person upon whom such penalty is imposed may, within sixty days of the imposition of such penalty, appeal in writing to the commissioner who shall abate the same if it is determined that such check was tendered in good faith with reasonable cause to believe that it would be paid.
Added by St.1981, c. 87. Amended by St.1991, c. 226; St.1996, c. 273; St.1996, c. 450, § 99.

§ 70. Payment for municipal programs, services, and activities; federal government reimbursements and other resources

Notwithstanding the provisions of sections thirty-one and fifty-three, any city or town may, by vote of its town meeting, town council or city council authorize the collector, treasurer or other department head, with the approval of the selectmen, town manager or mayor, to enter into contracts to identify and pursue federal government reimbursements for, or other revenues or available resources that may be generated by, programs or activities being carried out by the municipality, and to provide that payments for services under such contracts may be made from the reimbursements or revenues recovered as a result of the services performed without appropriation of such revenues. The provision of this section shall not apply to reimbursements, revenues or resources that may be available from the medical care and assistance program administered by the commonwealth pursuant to chapter one hundred and eighteen E.
Added by St.1992, c. 133, § 377. Amended by St.1996, c. 450, § 100.

§ 71. Contracts for revenue raising activities; regulations and guidelines; negotiation

Contracts under the authority of section seventy shall be subject to such regulations and guidelines as the commissioner of revenue may issue. The commissioner of revenue is further authorized to negotiate contracts with vendors for particular types of services to be provided and paid for under the terms of said section seventy, and cities and towns may enter into such contracts negotiated by the commissioner with the vendors designated by the commissioner without complying with the provisions of chapter thirty B.
Added by St.1992, c. 133, § 377.

§ 72. Federal funds for reimbursable medical expenses; distribution

Notwithstanding the provisions of any general or special law to the contrary, any local government entity may receive federal funds for reimbursable medical services where all conditions set forth in this section are met. Federal payments under Title XIX of the Social Security Act, claimed pursuant to this section, shall be distributed as follows: (1) with regard to federal payments that are attributable to reimbursable medical services provided to students who are in residential special education programs pursuant to the provisions of chapter 71B, (a) 50 per cent of such payments shall be returned to the local government entity, and (b) 50 per cent of such payments shall be deposited into the general fund; (2) with regard to federal payments that are attributable to any other reimbursable medical service, 100 per cent of such payments shall be returned to the local government entity, except that, for the purpose of paying the contingency fee due to a commonwealth contractor for obtaining federal payments attributable to such non-education-related services, the comptroller shall retain from such a local government entity

payments in an amount equal to such contingency fee. For purposes of this section, "commonwealth contractor" shall mean any party with whom the commonwealth has entered into a contingency agreement for the purpose of assisting the local government entity in obtaining federal reimbursement. Federal payments under Title XXI of the Social Security Act, claimed pursuant to this section, shall be distributed as follows: (1) any federal payment amount in excess of 50 per cent of the expenditure amount claimed by the division of medical assistance on the federal claim form shall be deposited into the Children's and Seniors' Health Care Assistance Fund established by section 2FF of chapter 29; and (2) the remaining federal payment amount shall be distributed in the manner described in the preceding sentence. Any funds received by a local government entity pursuant to the provisions of this section shall be considered unrestricted revenue of the local government entity and may be spent in accordance with any general or special law governing the expenditure of the entity's revenues. Before incurring any cost or providing any service for which it intends to claim federal payments under this section, the local government entity shall obtain the approval of the division, but the division, in its sole discretion, may waive this requirement where it determines that such a waiver would be in the best interests of the commonwealth. To receive any amounts under this section, the local government entity shall enter into a written agreement with the division directly or indirectly through an agency or other political subdivision, which agreement shall contain all provisions that the division deems suitable or necessary to support any claim for federal payments under this section. In addition, any local government entity that has entered into a written agreement with the division shall provide to the division, on such forms and at such times as the division may require, any information that the division deems suitable or necessary to support any claim for federal payments under this section. The division shall have the sole discretion to approve or disapprove any local government entity's proposal to claim federal payments. No action or failure to act by the division under this section shall be subject to any administrative or judicial review. The parent or guardian of any child who receives any service for which a local government entity is responsible under this section and which otherwise would be a reimbursable medical service shall, upon request, disclose to such local government entity the child's member identification number established by the division. For the purposes of this section, "federal payments" shall mean amounts received by the commonwealth as reimbursement for the federal share of payments for services described herein. For the purposes of this section, "local government entity" shall mean any city or town, public health commission, charter school or regional school district that is responsible, or assumes responsibility, either directly or indirectly through an agency or other political subdivision, for payment of the state share for services described herein. Such state share shall consist exclusively of public funds. Any local or regional school district or committee and the department of education may also contribute to the state share for any such services that are provided under the auspices of said department. For the purposes of this section, "reimbursable medical services" shall mean services, including administrative activities related to such services, that are medically necessary and for which federal payment otherwise is available under the programs of medical care and assistance established under chapter 118E and policies, procedures and criteria established by the division. For the purposes of this section, "state share" shall mean amounts which the commonwealth is obligated to assume in order to claim federal payment for reimbursable medical services.

Added by St.1993, c. 50, § 17. Amended by St.1995, c. 38, § 62; St.1999, c. 127, § 55; St.2003, c. 26, § 186, eff. July 1, 2003.

CHAPTER 44A

QUALIFIED BOND ACT

Chapter 44A of the General Laws was added by St.1980, c. 329, § 68.

Section
1. Definitions.
2. Application to qualify bonds; investigation; costs.
3. Resolution of board to authorize qualified bonds; release.
4. Authorization to issue bonds; time for adoption of resolution.
5. Recital of issuance pursuant to this act; maturity date.
6. Temporary notes.
7. Certification to state treasurer; payment of debt service; costs assessed.
8. Covenant by commonwealth.
9. Certification conclusive as to amount payable; estoppel.
10. Obligation to appropriate or levy taxes to pay bonds when due; rules and regulations.
11. Bonds for construction, etc. of property.
11A. Covenants contained in proceedings authorizing issuance of bonds.
12. Commonwealth not to act as pledge or surety.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Definitions

For the purposes of this chapter, unless the context otherwise requires, the following words shall have the following meanings:—

"Commissioner", the commissioner of revenue.

"Debt service", payments of principal and interest upon qualified bonds issued pursuant to this chapter.

"Director", the director of the bureau of accounts.

"Distributable aid", distributions to the several cities, towns, and regional school districts under the provisions of section eighteen A and eighteen C of chapter fifty-eight.

"Municipal finance oversight board" or "Board" shall mean a board composed of the attorney general, the state treasurer, the state auditor, and the director of accounts in the department of revenue, or their designees.

"Qualified bonds", those bonds of a city, town or regional school district authorized and issued in accordance with the Qualified Bond Act.

"Qualified Bond Act", chapter forty-four A of the General Laws.

Added by St.1980, c. 329, § 68. Amended by St.2003, c. 46, § 37, eff. July 31, 2003; St.2004, c. 149, §§ 100, 101, eff. July 1, 2004.

§ 2. Application to qualify bonds; investigation; costs

Whenever a city, town or regional school district votes, in accordance with law, to incur debt and to issue bonds for any purpose or purposes for which it is authorized by law to borrow, the treasurer of the city, town or regional school district, with the approval of the city council and city manager, if any, or otherwise the mayor in a city, the board of selectmen in a town, or the regional district school committee, as the case may be, may file an application and certified copy of the vote as passed with the board to qualify the bonds pursuant to the provisions of this chapter. Upon receipt of the application, the board shall cause an investigation to be made, taking into consideration the need for the improvements to be financed from the proceeds of the proposed qualified bonds, the ability of the city, town or regional school district and all other entities which include all or any part of its territory to provide other essential public improvements and services and to pay when due the principal and interest on its debts, the reasonableness of the amounts to be expended for each of the purposes or improvements to be financed, the amount of state local aid payments likely to be made to the city, town or regional school district with the payments to be made on the proposed bonds, and such other factors as the board may deem necessary or advisable. The cost of the investigation shall be assessed against the city, town or regional school district and may be paid from the proceeds of the qualified bonds or of any temporary notes in anticipation of the sale of the bonds. The costs assessed shall in no case be less than two hundred and fifty dollars.

Added by St.1980, c. 329, § 68.

§ 3. Resolution of board to authorize qualified bonds; release

If the investigation determines to the satisfaction of the board that such city, town or regional school

district should be entitled to issue qualified bonds, the board may by resolution authorize such city, town or regional school district to issue such qualified bonds. In considering any vote submitted to it and before certifying its approval thereof and authorization of qualified bonds, the board may require, in writing, the city council, town meeting or regional district school committee to adopt resolutions restricting or limiting any future proceedings with respect to the authorization of bonds or other matters deemed by the board to affect any estimate made or to be made by it as a result of the investigation made in accordance with section two. Every resolution so adopted shall constitute a valid and binding obligation of the city, town or regional school district running to and enforceable by the board; provided, however, that upon application of the city, town or regional school district, the board may, after investigation thereof, release the city, town or regional school district from any restrictions or limitations contained in the resolution, if it finds that such release is in the best interests of the city, town or regional school district and will not impair the security of the qualified bonds.

Added by St.1980, c. 329, § 68.

§ 4. Authorization to issue bonds; time for adoption of resolution

Within sixty days after the submission to it of an application under section two, the board shall authorize the issuance of qualified bonds, if it is satisfied that the issuance of qualified bonds is appropriate. The authorization shall be recorded in a resolution adopted by the board. If the board is not satisfied, it shall so indicate by the adoption within said sixty day period of a resolution stating its disapproval of the request. Failure to adopt an authorizing resolution within this sixty day period shall be a denial of the application.

Added by St.1980, c. 329, § 68.

§ 5. Recital of issuance pursuant to this act; maturity date

All qualified bonds when issued shall contain a recital to the effect that they are issued pursuant to the Qualified Bond Act and are entitled to the benefits of the provisions of this chapter. The final maturity of such qualified bonds shall occur not less than ten nor more than thirty years from the date of issuance without regard to any limitation as to maturities or amounts of annual installments for bonds provided in any other law.

Added by St.1980, c. 329, § 68.

§ 6. Temporary notes

Any city, town or regional school district which has been authorized by the board to issue qualified bonds may issue temporary notes in anticipation of the issuance of the qualified bonds to the extent permitted by sections seventeen and seventeen A of chapter forty-four; provided, however, that such notes shall be subject to such additional terms or conditions as may be fixed or required by the board to ensure that funds are borrowed only as needed to meet required payments for construction, development, extension, improvement, or acquisition of the facilities or improvements to be financed by the issuance of the qualified bonds.

Added by St.1980, c. 329, § 68.

§ 7. Certification to state treasurer; payment of debt service; costs assessed

The treasurer of each city, town or regional school district which issues qualified bonds shall certify to the state treasurer the maturity schedule, interest rate, and dates of payment of debt service on the qualified bonds within ten days after the date of issuance of the qualified bonds. The state treasurer or the paying agents approved by him shall become the paying agents for the principal and interest on such qualified bonds. The state treasurer shall pay such debt service and after payment shall withhold from the distributable aid payable to the city, town or regional school district an amount which will be sufficient to pay the debt service on the qualified bonds or, if the amount of such distributable aid in any year is insufficient for this purpose, from any other amounts payable by the commonwealth to such city, town or regional school district under any provision of law. From the time withheld by the state treasurer, all such distributable aid or other amounts so withheld and paid shall be exempt from being levied upon, taken, sequestered, or applied toward paying the debts of the city, town or regional school district other than for payment of debt service on such qualified bonds.

All costs accruing to the commonwealth as the result of such qualified bond issues, including administrative costs as well as loss of interest income, shall be the liability of the city, town or regional school district and shall be assessed in accordance with section twenty of chapter fifty-eight.

Added by St.1980, c. 329, § 68.

§ 8. Covenant by commonwealth

The commonwealth hereby covenants with the purchasers, holders and owners, from time to time, of qualified bonds that it will not repeal, revoke, rescind, modify, or amend the provisions of section seven so as to create any lien or charge on or pledge, assignment, diversion, withholding of payment, or other use of or deduction from any distributable aid or other amounts to be paid to any holder of qualified bonds which is prior in time or superior in right to the payment required by said section; provided, however, that nothing herein contained shall be deemed or construed to require the commonwealth to continue to make payments of distributable aid or other amounts or to limit or prohibit the commonwealth from repealing or amending any law heretofore or hereafter enacted for the payment or apportionment of such aid or other amounts, of the manner, time, or amount thereof.

Added by St.1980, c. 329, § 68. Amended by St.1986, c. 557, § 65.

§ 9. Certification conclusive as to amount payable; estoppel

The certification to the state treasurer as to the amount payable in any year for debt service on such qualified bonds shall be fully conclusive as to such qualified bonds from and after the time of issuance of such qualified bonds, notwithstanding any irregularity, omission, or failure as to compliance with any of the provisions of this chapter with respect to such qualified bonds; provided, however, that such qualified bonds contain a recital to the effect that they are entitled to the benefits of the provisions of the Qualified Bond Act. All persons shall be forever estopped from denying that such qualified bonds are entitled to the benefits of the provisions of this chapter.

Added by St.1980, c. 329, § 68.

§ 10. Obligation to appropriate or levy taxes to pay bonds when due; rules and regulations

Nothing in this chapter shall be construed to relieve any city or town of the obligation imposed on it by law to appropriate and to include in its annual tax levy amounts necessary to pay, in each year, the principal and interest maturing and becoming due on any qualified bonds issued by such city, town or regional school district; provided, however, that to the extent of the amounts of distributable aid or other amounts payable to such city, town or regional school district which have been withheld and have been or are to be forwarded to the paying agent for such qualified bonds, the state treasurer shall certify to the city auditor or town accountant, or officer having similar duties in a city or town, or to the treasurer of the regional school district, as the case may be, the amounts so withheld and thereafter such amounts shall be credited to the appropriations of the city, town or regional school district for the current fiscal year; and provided, further, that to the extent to which distributable aid is not appropriated by the commonwealth in any fiscal year, such appropriated amounts of the city, town or regional school district shall be used to pay the debt service maturing and becoming due in such year on such qualified bonds of the city, town or regional school district; and provided, further, that amounts of distributable aid and other amounts withheld and paid to a paying agent under section seven shall be included in the estimated receipts certified by the commissioner under section twenty-five A of chapter fifty-eight and used by the assessors in determining the tax rate in accordance with section twenty-three of chapter fifty-nine. The commissioner may promulgate rules and regulations which, in his judgment, ensure that the use and effect of qualified bonds is properly and adequately reported to the public.

Added by St.1980, c. 329, § 68.

§ 11. Bonds for construction, etc. of property

The provisions of this chapter shall not be construed to prohibit any city, town or regional school district from applying for authorization to issue qualified bonds pursuant to the terms of this chapter in connection with the construction, reconstruction, development, extension, or improvement of property, notwithstanding that the construction, reconstruction, development, extension, improvement or acquisition was authorized, approved or commenced prior to the effective date of this chapter.

Added by St.1980, c. 329, § 68.

§ 11A. Covenants contained in proceedings authorizing issuance of bonds

The proceedings of the city or town authorizing the issuance of qualified bonds may contain such

covenants and provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants restricting the issuance of additional qualified bonds.

Added by St.1980, c. 329, § 68.

§ 12. Commonwealth not to act as pledge or surety

Nothing in this chapter shall be construed to pledge the credit and assets of the commonwealth to the support of bonds issued pursuant to this chapter or to guarantee payment or stand as surety for the payment of bonds pursuant to this chapter.

Added by St.1980, c. 329, § 68.

CHAPTER 44B

COMMUNITY PRESERVATION

Chapter 44B of the General Laws was added by St.2000, c. 267, § 1.

Section

1. Title.
2. Definitions.
3. Acceptance of Secs. 3 to 7.
4. Surcharge on real property; collection.
5. Community preservation committee; members; recommendations.
6. Annual revenues; open space, historic resources and community housing.
7. Community preservation fund.
8. Surcharges; fees of registers of deeds; fees of assistant recorder.
9. Massachusetts community preservation trust fund.
10. Annual distributions of monies in trust fund.
11. General obligation bonds or notes.
12. Real property interest; deed restriction; management.
13. Accurate account of recommendations and actions; records of appropriations and expenditures and of real property interests.
14. State grants.
15. Tort liability for destruction of real property purchased with funds from chapter.
16. Amendments to amount and computation of surcharge; revocation of Secs. 3 to 7.
17. Rules and regulations.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Title

This chapter shall be known and may be cited as the Massachusetts Community Preservation Act.

Added by St.2000, c. 267, § 1.

§ 2. Definitions

As used in this chapter, the following words shall, unless the context clearly indicates a different meaning, have the following meanings:—

"Acquire", obtain by gift, purchase, devise, grant, rental, rental purchase, lease or otherwise. "Acquire" shall not include a taking by eminent domain, except as provided in this chapter.

"Annual income", a family's or person's gross annual income less such reasonable allowances for dependents, other than a spouse, and for medical expenses as the housing authority or, in the event that there is no housing authority, the department of housing and community development, determines.

"Community housing", low and moderate income housing for individuals and families, including low or moderate income senior housing.

"Community preservation", the acquisition, creation and preservation of open space, the acquisition, creation and preservation of historic resources and the creation and preservation of community housing.

"Community preservation committee", the committee established by the legislative body of a city or town to make recommendations for community preservation, as provided in section 5.

"Community Preservation Fund", the municipal fund established under section 7.

"CP", community preservation.

"Historic resources", a building, structure, vessel real property, document or artifact that is listed or eligible for listing on the state register of historic places or has been determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of a city or town.

"Legislative body", the agency of municipal government which is empowered to enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan orders, bond authorizations and other financial matters and whether styled as a city council, board of aldermen, town council, town meeting or by any other title.

"Low income housing", housing for those persons and families whose annual income is less than 80 per cent of the areawide median income. The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development.

"Low or moderate income senior housing", housing for those persons having reached the age of 60 or over who would qualify for low or moderate income housing.

"Maintenance", the upkeep of real or personal property.

"Moderate income housing", housing for those persons and families whose annual income is less than 100 per cent of the areawide median income.

The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development.

"Open space", shall include, but not be limited to, land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use.

"Preservation", protection of personal or real property from injury, harm or destruction, but not including maintenance.

"Real property", land, buildings, appurtenant structures and fixtures attached to buildings or land, including, where applicable, real property interests.

"Real property interest", a present or future legal or equitable interest in or to real property, including easements and restrictions, and any beneficial interest therein, including the interest of a beneficiary in a trust which holds a legal or equitable interest in real property, but shall not include an interest which is limited to the following: an estate at will or at sufferance and any estate for years having a term of less than 30 years; the reversionary right, condition or right of entry for condition broken; the interest of a mortgagee or other secured party in a mortgage or security agreement.

"Recreational use", active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field. "Recreational use" shall not include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.

"Rehabilitation", the remodeling, reconstruction and making of extraordinary repairs to historic resources, open spaces, lands for recreational use and community housing for the purpose of making such historic resources, open spaces, lands for recreational use and community housing functional for their intended use, including but not limited to improvements to comply with the Americans with Disabilities Act and other federal, state or local building or access codes. With respect to historic resources, rehabilitation shall have the additional meaning of work to comply with the Standards for Rehabilitation stated in the United States Secretary of the Interior's Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68.

Added by St.2000, c. 267, § 1. Amended by St.2002, c. 165, §§ 1 to 3; St.2006, c. 38, eff. June 13, 2006.

§ 3. Acceptance of Secs. 3 to 7

(a) Sections 3 to 7, inclusive, shall take effect in any city or town upon the approval by the legislative body and their acceptance by the voters of a ballot question as set forth in this section.

(b) Notwithstanding the provisions of chapter 59 or any other general or special law to the contrary, the legislative body may vote to accept sections 3 to 7, inclusive, by approving a surcharge on real property of not more than 3 per cent of the real estate tax levy against real property, as determined annually by the board of assessors. The amount of the surcharge shall not be included in a calculation of total taxes assessed for purposes of section 21C of said chapter 59.

(c) All exemptions and abatements of real property authorized by said chapter 59 or any other law for which a taxpayer qualifies as eligible shall not be affected by this chapter. A taxpayer receiving an exemption of real property authorized by said chapter 59 or any other law shall be exempt from any surcharge on real property established under this section. The surcharge to be paid by a taxpayer receiving an abatement of real property authorized by said chapter 59 or any other law shall be reduced in proportion to the amount of such abatement.

(d) Any amount of the surcharge not paid by the due date shall bear interest at the rate per annum provided in section 57 of said chapter 59.

(e) The legislative body may also vote to accept one or more of the following exemptions:

(1) for property owned and occupied as a domicile by a person who would qualify for low income housing or low or moderate income senior housing in the city or town;

(2) for class three, commercial, and class four, industrial, properties as defined in section 2A of said chapter 59, in cities or towns with classified tax rates; or

(3) for $100,000 of the value of each taxable parcel of residential real property.

(f) Upon approval by the legislative body, the actions of the body shall be submitted for acceptance to the voters of a city or town at the next regular municipal or state election. The city or town clerk or the state secretary shall place it on the ballot in the form of the following question: "Shall this (city or town) accept sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body, a summary of which appears below"

(Set forth here a fair, concise summary and purpose of the law to be acted upon, as determined by the city solicitor or town counsel, including in said summary the percentage of the surcharge to be imposed.)

If a majority of the voters voting on said question vote in the affirmative, then its provisions shall take effect in the city or town, but not otherwise.

(g) The final date for notifying or filing a petition with the city or town clerk or the state secretary to place such a question on the ballot shall be 35 days before the city or town election or 60 days before the state election.

(h) If the legislative body does not vote to accept sections 3 to 7, inclusive, at least 90 days before a regular city or town election or 120 days before a state election, then a question seeking said acceptance through approval of a particular surcharge rate with exemption or exemptions, may be so placed on the ballot when a petition signed by at least 5 per cent of the registered voters of the city or town requesting such action is filed with the registrars, who shall have seven days after receipt of such petition to certify its signatures. Upon certification of the signatures, the city or town clerk or the state secretary shall cause the question to be placed on the ballot at the next regular city or town election held more than 35 days after such certification or at the next regular state election held more than 60 days after such certification.

(i) With respect to real property owned by a cooperative corporation, as defined in section 4 of chapter 157B, that portion which is occupied by a member under a proprietary lease as the member's domicile shall be considered real property owned by that member for the purposes of exemptions provided under this section. The member's portion of the real estate shall be represented by the member's share or shares of stock in the cooperative corporation, and the percentage of that portion to the whole shall be determined by the percentage of the member's shares to the total outstanding stock of the corporation, including shares owned by the corporation. This portion of the real property shall be eligible for any exemption provided in this section if the member meets all requirements for the exemption. Any exemption so provided shall reduce the taxable valuation of the real property owned by the cooperative corporation, and the reduction in taxes realized by this exemption shall be credited by the cooperative corporation against the amount of the taxes otherwise payable by or chargeable to the member. Nothing in this subsection shall be construed to affect the tax status of any manufactured home or mobile home under this chapter, but this subsection shall apply to the land on which the manufactured home or mobile home is located if all other requirements of this clause are met. This subsection shall take effect in a city or town upon its acceptance by the city or town.
Added by St.2000, c. 267, § 1. Amended by St.2006, c. 393, eff. Mar. 22, 2007.

§ 4. Surcharge on real property; collection

(a) Upon acceptance of sections 3 to 7, inclusive, and upon the assessors' warrant to the tax collector, the accepted surcharge shall be imposed.

(b) After receipt of the warrant, the tax collector shall collect the surcharge in the amount and according to the computation specified in the warrant and shall pay the amounts so collected, quarterly or semi-annually, according to the schedule for collection of property taxes for the tax on real property, to the city's or town's treasurer. The tax collector shall cause appropriate books and accounts to be kept with respect to such surcharge, which shall be subject to public examination upon reasonable request from time to time.

(c) The remedies provided by chapter 60 for the collection of taxes upon real estate shall apply to the surcharge on real property pursuant to this chapter.
Added by St.2000, c. 267, § 1.

§ 5. Community preservation committee; members; recommendations

(a) A city or town that accepts sections 3 to 7, inclusive, shall establish by ordinance or by-law a community preservation committee. The committee shall consist of not less than five nor more than nine members. The ordinance or by-law shall determine the composition of the committee, the length of its term and the method of selecting its members, whether by election or appointment or

by a combination thereof. The committee shall include, but not be limited to, one member of the conservation commission established under section 8C of chapter 40 as designated by the commission, one member of the historical commission established under section 8D of said chapter 40 as designated by the commission, one member of the planning board established under section 81A of chapter 41 as designated by the board, one member of the board of park commissioners established under section 2 of chapter 45 as designated by the board and one member of the housing authority established under section 3 of chapter 121B as designated by the authority, or persons, as determined by the ordinance or by-law, acting in the capacity of or performing like duties of the commissions, board or authority if they have not been established in the city or town. If there are no persons acting in the capacity of or performing like duties of any such commission, board or authority, the ordinance or by-law shall designate those persons.

(b)(1) The community preservation committee shall study the needs, possibilities and resources of the city or town regarding community preservation. The committee shall consult with existing municipal boards, including the conservation commission, the historical commission, the planning board, the board of park commissioners and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one or more public informational hearings on the needs, possibilities and resources of the city or town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the city or town.

(2) The community preservation committee shall make recommendations to the legislative body for the acquisition, creation and preservation of open space; for the acquisition, preservation, rehabilitation and restoration of historic resources; for the acquisition, creation and preservation of land for recreational use; for the acquisition, creation, preservation and support of community housing; and for the rehabilitation or restoration of open space, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

(3) The community preservation committee may include in its recommendation to the legislative body a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

(c) The community preservation committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the community preservation committee shall constitute a quorum. The community preservation committee shall approve its actions by majority vote. Recommendations to the legislative body shall include their anticipated costs.

(d) After receiving such recommendations from the community preservation committee, the legislative body shall then take such action and approve such appropriations from the Community Preservation Fund as set forth in section 8, and such additional appropriations as it deems appropriate to carry out the recommendations of the community preservation committee.

(e) For the purposes of community preservation and upon the recommendation of the community preservation committee, a city or town may take by eminent domain under chapter 79, the fee or any lesser interest in real property or waters located in such city or town if such taking has first been approved by a two-thirds vote of the legislative body. Upon a like recommendation and vote, a city or town may expend monies in the Community Preservation Fund, if any, for the purpose of paying, in whole or in part, any damages for which a city or town may be liable by reason of a taking for the purposes of community preservation.

(f) Section 16 of chapter 30B shall not apply to the acquisition by a city or town, of real property or an interest therein, as authorized by this chapter for the purposes of community preservation and upon recommendation of the community preservation committee and, notwithstanding section 14 of chapter 40, for purposes of this chapter, no such real property, or interest therein, shall be acquired by any city or town for a price exceeding the value of the property as determined by such city or town

through procedures customarily accepted by the appraising profession as valid.

A city or town may appropriate money in any year from the Community Preservation Fund to an affordable housing trust fund.

Added by St.2000, c. 267, § 1. Amended by St.2002, c. 165, § 4; St.2003, c. 46, § 38, eff. July 31, 2003; St.2004, c. 491, § 2, eff. April 7, 2005; St.2006, 289, eff. Dec. 5, 2006.

§ 6. Annual revenues; open space, historic resources and community housing

In every fiscal year and upon the recommendation of the community preservation committee, the legislative body shall spend, or set aside for later spending, not less than 10 per cent of the annual revenues in the Community Preservation Fund for open space, but not including land for recreational use, not less than 10 per cent of the annual revenues for historic resources and not less than 10 per cent of the annual revenues for community housing. In each fiscal year, the legislative body shall make such appropriations from the Community Preservation Fund as it deems necessary for the administrative and operating expenses of the community preservation committee, but the appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation Fund. Funds that are set aside shall be held in the Community Preservation Fund and spent in that year or later years, but funds set aside for a specific purpose shall be spent only for the specific purpose. Any funds set aside may be expended in any city or town in the commonwealth. The community preservation funds shall not replace existing operating funds, only augment them.

Added by St.2000, c. 267, § 1.

§ 7. Community preservation fund

Notwithstanding the provisions of section 53 of chapter 44 or any other general or special law to the contrary, a city or town that accepts sections 3 to 7, inclusive, shall establish a separate account to be known as the Community Preservation Fund of which the municipal treasurer shall be the custodian. The authority to approve expenditures from the fund shall be limited to the legislative body and the municipal treasurer shall pay such expenses in accordance with chapter 41.

The following monies shall be deposited in the fund: (a) all funds collected from the real property surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 11; (b) all funds received from the commonwealth or any other source for such purposes; and (c) proceeds from the disposal of real property acquired with funds from the Community Preservation Fund. The treasurer may deposit or invest the proceeds of the fund in savings banks, trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Insurance Corporation or national banks, or may invest the proceeds in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth or in the manner authorized by section 54 of chapter 44, and any income therefrom shall be credited to the fund. The expenditure of revenues from the fund shall be limited to implementing the recommendations of the community preservation committee and providing administrative and operating expenses to the committee.

Added by St.2000, c. 267, § 1.

§ 8. Surcharges; fees of registers of deeds; fees of assistant recorder

(a) Except as otherwise provided, the fees of the registers of deeds to be paid when a document or instrument is recorded shall be subject to a surcharge of $20; provided, however, that if the document or instrument to be filed includes multiple references to a document or instrument intending or attempting to assign, discharge, release, partially release, subordinate or notice any other document or instrument, each reference shall be separately indexed and separately assessed an additional $20 surcharge. The fee for recording a municipal lien certificate shall be subject to a surcharge of $10; provided, however, that if the certificate includes multiple references to a document or instrument intending or attempting to assign, discharge, release, partially release, subordinate or notice any other document or instrument, each reference shall be separately indexed and separately assessed an additional $10 surcharge. The surcharges imposed shall be used for community preservation purposes. No surcharge shall apply to a declaration of homestead under chapter 188. No surcharge shall apply to the fees charged for additional pages, photostatic copies, abstract cards or additional square feet for the recording of plans.

(b) The fees of the assistant recorder, except as otherwise provided, to be paid when the instrument is left for registering, filing or entering with respect to registered land shall be subject to a surcharge of $20. The fees for so registering, filing or entering a municipal lien certificate shall be subject to a surcharge of $10. The surcharges shall be imposed for the purposes of community preservation. No surcharge shall apply to a declaration of homestead of chapter 188. No surcharge shall apply to the fees charged for additional lots shown on plans, for indexing instruments recorded while a petition for registering is pending, for additional certificates of sewer assessments, for old age assistance liens, for duplicates and for photocopies.

(c) All surcharges on fees collected pursuant to this section shall be forwarded to the Massachusetts Community Preservation Trust Fund, established in section 9.

Added by St.2000, c. 267, § 1. Amended by St.2008, c. 182, § 13, eff. Mar. 5, 2003.

§ 9. Massachusetts community preservation trust fund

(a) There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Massachusetts Community Preservation Trust Fund, for the benefit of cities and towns that have accepted sections 3 to 7, inclusive, and pursuant to said sections 3 to 7, inclusive, have imposed a surcharge on their real property tax levy, subject to any exemptions adopted by a municipality. The fund shall consist of all revenues received by the commonwealth: (1) under the provisions of section 8; (2) from public and private sources as gifts, grants and donations to further community preservation programs; (3) from damages, penalties, costs or interest received on account of litigation or settlement thereof for a violation of section 15; or (4) all other monies credited to or transferred to from any other fund or source pursuant to law.

(b) The state treasurer shall deposit the fund in accordance with the provisions of section 10 in such manner as will secure the highest interest rate available consistent with the safety of the fund and with the requirement that all amounts on deposit be available for withdrawal without penalty for such withdrawal at any time. All interest accrued and earnings shall be deposited into the fund. The fund shall be expended solely for the administration and implementation of this chapter. Any unexpended balances shall be redeposited for future use consistent with the provisions of this chapter.

(c) The state treasurer shall make all disbursements and expenditures from the fund without further appropriation, as directed by the commissioner of revenue in accordance with said section 10. The department of revenue shall report by source all amounts credited to said fund and all expenditures from said fund. The commissioner of revenue shall assign personnel of the department as it may need to administer and manage the fund disbursements and any expense incurred by the department shall be deemed an operating and administrative expense of the program. The operating and administrative expenses shall not exceed 5 per cent of the annual total revenue received under the provisions of said section 10.

Added by St.2000, c. 267, § 1.

§ 10. Annual distributions of monies in trust fund

(a) The commissioner of revenue shall annually on October 15 disburse monies from the fund established in section 10 to cities and towns that have accepted sections 3 to 7, inclusive, and notified the commissioner of their acceptance. The community shall notify the commissioner of the date and terms on which the voters accepted said sections 3 to 7, inclusive. The municipal tax collecting authority shall certify to the commissioner the amount the municipality has raised through June 30 by imposing a surcharge on its real property levy and shall certify the percentage of the surcharge applied.

(b) The commissioner shall multiply the amount in the fund by 80 per cent. This amount distributed in the first round distribution shall be known as the match distribution. The first round total shall be distributed to each city or town accepting said sections 3 to 7, inclusive, in an amount not less than 5 per cent but not greater than 100 per cent of the total amount raised by the additional surcharge on real property by each city or town. The percentage shall be the same for each city and town and shall be determined by the commissioner annually in a manner that distributes the maximum amount available to each participating city or town.

(c) The commissioner shall further divide the remaining 20 per cent of the fund in a second round distribution, known as the equity distribution. The commissioner shall determine the equity distribution in several steps. The first step shall be

to divide the remaining 20 per cent of the fund by the number of cities and towns that have accepted said sections 3 to 7, inclusive. This dividend shall be known as the base figure for equity distribution. This base figure shall be determined solely for purposes of performing the calculation for equity distribution and shall not be added to the amount received by a participant.

(d) Each city and town in the commonwealth shall be assigned a community preservation rank for purposes of the equity distribution. The commissioner shall determine each community's rank by first determining the municipality's equalized property valuation per capita ranking, ranking municipalities from highest to lowest valuation. The commissioner shall also determine the population of each municipality and rank each from largest to smallest in population. The commissioner shall add each equalized property valuation rank and population rank, and divide the sum by two. The dividend is the community preservation raw score for that municipality.

(e) The commissioner shall then order each municipality by CP raw score, from the lowest raw score to the highest raw score. This order shall be the CP rank for each municipality. If more than one municipality has the same CP raw score, the municipality with the higher equalized valuation rank shall receive the higher CP rank.

[There are two subsections (f).]

(f) After determining the CP rank for each municipality in the commonwealth, the commissioner shall divide all municipalities into deciles according to their CP ranking, with approximately the same number of municipalities in each decile, and with the municipalities with the highest CP rank shall be placed in the lowest decile category, starting with decile 10. Percentages shall be assigned to each decile as follows:—

decile 1	140 per cent of the base figure.
decile 2	130 per cent of the base figure.
decile 3	120 per cent of the base figure.
decile 4	110 per cent of the base figure.
decile 5	100 per cent of the base figure.
decile 6	90 per cent of the base figure.
decile 7	80 per cent of the base figure.
decile 8	70 per cent of the base figure.
decile 9	60 per cent of the base figure.
decile 10	50 per cent of the base figure.

After assigning each municipality to a decile according to their CP rank, the commissioner shall multiply the percentage assigned to that decile by the base figure to determine the second round equity distribution for each participant.

[There are two subsections (f).]

(f) Notwithstanding any other provision of this section, the total state contribution for each city or town shall not exceed the amount raised by the municipality's surcharge on its real property levy.

(g) When there are monies remaining in the trust fund after the first and second round distributions, and any necessary administrative expenses have been paid in accordance with section 6, the commissioner may conduct a third round surplus distribution. Any remaining surplus in the fund may be distributed by dividing the amount of the surplus by the number of cities and towns that have accepted this chapter. The resulting dividend shall be the surplus base figure. The commissioner shall then use the decile categories and percentages as defined in this section to determine a surplus equity distribution for each participant.

(h) The commissioner shall determine each participant's total state grant by adding the amount received in the first round distribution with the amounts received in any later round or rounds of distributions, with the exception of a city or town that has already received a grant equal to 100 per cent of the amount the community raised by its surcharge on its real property levy.

(1) Only those cities and towns that adopt the maximum surcharge allowed by this chapter shall be eligible to receive additional state monies through the equity and surplus distributions.

(2) If less than 10 per cent of the cities and towns in the commonwealth have accepted sections 3 to 7, inclusive, and imposed and collected a surcharge on their real property levy, the commissioner may calculate the state grant with only one round of distributions, or in any other equitable manner.

[There is no subsection (i).]

(j) After distributing the trust fund in accordance with this section, the commissioner may keep any remaining funds in the trust for distribution in the following year.

Added by St.2000, c. 267, § 1.

§ 11. General obligation bonds or notes

A city or town that accepts sections 3 to 7, inclusive, may issue, from time to time, general

obligation bonds or notes in anticipation of revenues to be raised pursuant to section 3, the proceeds of which shall be deposited in the Community Preservation Fund. Bonds or notes so issued may be at such rates of interest as shall be necessary and shall be repaid as soon after such revenues are collected as is expedient. Cities or towns that choose to issue bonds pursuant to this section shall make every effort to limit the administrative costs of issuing such bonds by cooperating among each other using methods including, but not limited to, common issuance of bonds or common retention of bond counsel. Except as otherwise provided in this chapter, bonds or notes issued pursuant to this section shall be subject to the applicable provisions of chapter 44. The maturities of each issue of bonds or notes issued under this chapter may be arranged so that for each issue the amounts payable in the several years for principal and interest combined shall be as nearly equal as practicable in the opinion of the officers authorized to issue bonds or notes or, in the alternative, in accordance with a schedule providing for a more rapid amortization of principal.

Added by St.2000, c. 267, § 1.

§ 12. Real property interest; deed restriction; management

(a) A real property interest that is purchased with monies from the Community Preservation Fund shall be bound by a permanent deed restriction that meets the requirements of chapter 184, limiting the use of the interest to the purpose for which it was acquired. The deed restriction shall run with the land and shall be enforceable by the city or town or the commonwealth. The deed restriction may also run to the benefit of a nonprofit, charitable corporation or foundation selected by the city or town with the right to enforce the restriction.

(b) Real property interests acquired under this chapter shall be owned and managed by the city or town, but the legislative body may delegate management of such property to the conservation commission, the historical commission, the board of park commissioners or the housing authority, or, in the case of interests to acquire sites for future wellhead development by a water district, a water supply district or a fire district. The legislative body may also delegate management of such property to a nonprofit organization created under chapter 180 or chapter 203.

Added by St.2000, c. 267, § 1.

§ 13. Accurate account of recommendations and actions; records of appropriations and expenditures and of real property interests

The community preservation committee shall keep a full and accurate account of all of its actions, including its recommendations and the action taken on them and records of all appropriations or expenditures made from the Community Preservation Fund. The committee shall also keep records of any real property interests acquired, disposed of or improved by the city or town upon its recommendation, including the names and addresses of the grantors or grantees and the nature of the consideration. The records and accounts shall be public records.

Added by St.2000, c. 267, § 1.

§ 14. State grants

Notwithstanding the provisions of any general or special law to the contrary, every city and town may accept sections 3 to 7, inclusive, and may thereupon receive state grants under section 10. A city or town that accepts said sections 3 to 7, inclusive, shall not be precluded from participating in state grant programs.

State grant programs may include local adoption of this chapter among the criteria for selection of grant recipients. Funds in the Community Preservation Fund may be made available and used by the city or town as the local share for state or federal grants upon recommendation of the community preservation committee and the legislative body, as provided for in section 5, if such grants and such local share are used in a manner consistent with the recommendations of the community preservation committee.

Added by St.2000, c. 267, § 1.

§ 15. Tort liability for destruction of real property purchased with funds from chapter

(a) A person who, without permission, knowingly carries away or steals, mutilates, destroys, damages, causes to be damaged or cuts any tree, shrub, grass or any other portion of real property purchased by a city or town with funds derived from this chapter shall be liable to the city or town in tort for such actions.

(b) Damages, including punitive damages for willful or wanton violation of this chapter or any rule or regulation issued or adopted hereunder, may be recovered in a civil action brought by the city or town or, upon request of the city or town, by the attorney general. The city or town or, upon request of the city or town, the attorney general, may bring an action for injunctive relief against any person violating this chapter or any rule or regulation issued hereunder. The superior court shall have jurisdiction to enjoin violations, to award damages and to grant such further relief as it may deem appropriate.

(c) Any damages, penalties, costs or interest thereon recovered pursuant to this section shall be deposited into the Community Preservation Fund of the city or town in which the violation occurred.
Added by St.2000, c. 267, § 1.

§ 16. Amendments to amount and computation of surcharge; revocation of Secs. 3 to 7

(a) At any time after imposition of the surcharge, the legislative body may approve and the voters may accept an amendment to the amount and computation of the surcharge, or to the amount of exemption or exemptions, in the same manner and within the limitations set forth in this chapter.

(b) At any time after the expiration of five years after the date on which sections 3 to 7, inclusive, have been accepted in a city or town, said sections may be revoked in the same manner as they were accepted by such city or town, but the surcharge imposed under section 3 shall remain in effect in any such city or town, with respect to unpaid taxes on past transactions and with respect to taxes due on future transactions, until all contractual obligations incurred by the city or town prior to such termination shall have been fully discharged.
Added by St.2000, c. 267, § 1.

§ 17. Rules and regulations

The commissioner of revenue shall have the authority to promulgate rules and regulations to effect the purposes of this chapter.
Added by St.2000, c. 267, § 1.

CHAPTER 48

FIRES, FIRE DEPARTMENTS AND FIRE DISTRICTS

Selected sections

Section

57A. Days off for working on holidays.
57B. Fire fighters; attendance of AFL–CIO–CLC convention.
57C. Fire fighters; attendance of Massachusetts Permanent Firemen's Association or Massachusetts State Firemen's Association conventions.
57D. Fire fighters; working on holidays; additional pay or day off.
57E. Fire chiefs; working on holidays; additional pay.
57G. Compensation of certain heads of fire and police departments.
69. Taxation; purposes.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 57A. Days off for working on holidays

If any permanent member of the fire fighting force or fire alarm division of a fire department of a city or town is required to serve a tour of duty during the twenty-four hour period commencing at eight o'clock in the morning of January the first, July the fourth or Christmas day, or the day following when any of said days occurs on Sunday, or the third Monday in February, the third Monday in April, the last Monday in May, the first Monday in September, the second or fourth Monday in October or Thanksgiving day, he shall be given an additional day off, or, if such additional day off cannot be given because of personnel shortage or other cause, he shall be entitled to an additional day's pay; provided, that any such member who, through a rotation of shifts, works different days in successive weeks shall be granted, in each year in which the number of holidays falling on his regular days off is in excess of the number of holidays in such year falling on Saturday, additional days off equal to the excess, and, if any such additional day off cannot be given because of personnel shortage or other cause, an additional day's pay shall be allowed in lieu thereof. This section shall take effect in a city having a Plan E charter when accepted by the affirmative vote of a majority of the city council, and in the case of other cities by vote of the city council, subject to the provisions of its charter, and in a town by a majority vote at an annual town meeting, but not otherwise.

Added by St.1953, c. 640. Amended by St.1970, c. 547, § 1.

§ 57B. Fire fighters; attendance of AFL–CIO–CLC convention

Members of the fire department in any city, town, or fire district adopting this section may be excused from duty for not more than four days in any year without loss of pay while in attendance as an official delegate to the Professional Fire Fighters of Massachusetts, AFL–CIO–CLC convention held within the commonwealth.

Added by St.1959, c. 285, § 1. Amended by St.1977, c. 36.

§ 57C. Fire fighters; attendance of Massachusetts Permanent Firemen's Association or Massachusetts State Firemen's Association conventions

Members of the fire department in any city or town accepting the provisions of this section may be excused from duty for not more than two days in any year without loss of pay while in attendance as an official delegate to the convention of the Massachusetts Permanent Firemen's Association or the Massachusetts State Firemen's Association held within the commonwealth; provided, however, that any such member who attends both such conventions as an official delegate may be excused from duty for not more than four days in any year.

Added by St.1962, c. 291.

§ 57D. Fire fighters; working on holidays; additional pay or day off

If any permanent member of the fire fighting force or fire alarm division of a fire department of a city or town which accepts this section is required to be on duty at any time on January the first, July the fourth or Christmas day, or the day following when any of said days occurs on Sunday, or the third Monday in February, the third Monday in April, the last Monday in May, the first Monday in September, the second or fourth Monday in October or Thanksgiving day, he shall be given an additional day off, or, if such additional day off cannot be given because of personnel shortage or other cause, he shall be entitled to an additional

day's pay; provided, that in the case of any such member whose regular day off or vacation day or a day on which he is absent from duty because of injuries received in the performance of his duties falls on any of the aforementioned holidays, an additional day off shall be allowed, or payments in lieu of one day shall be allowed. Such day's pay shall be one fifth of his regular weekly salary. Section fifty-seven A shall not apply in any such city or town.

Added by St.1962, c. 517. Amended by St.1967, c. 522; St.1970, c. 547, § 2.

§ 57E. Fire chiefs; working on holidays; additional pay

If the chief of a fire department of a city or town or the chief, chief engineer or head of a fire department of a fire district is on duty at any time on January the first, July the fourth or Christmas day, or the day following when any of said days occurs on Sunday, or the third Monday in February, the third Monday in April, the last Monday in May, the first Monday in September, the second or fourth Monday in October or Thanksgiving day, he shall be granted an additional day's pay.

Added by St.1965, c. 141. Amended by St.1967, c. 799; St.1970, c. 547, § 3.

§ 57G. Compensation of certain heads of fire and police departments

The permanent, full-time fire chief or chief engineer of a fire department in any city, other than Boston, or town or fire district, and the permanent, full-time chief of police or superintendent of police, or city marshall, in any city, other than Boston, or town shall receive an annual base rate of compensation which shall not be less than the following ratios of the highest annual rate of compensation of a permanent, full-time firefighter, or a permanent, full-time police officer or patrolman, as the case may be:

1. In departments having less than twelve permanent, full-time police officers or firefighters, the ratio shall be: 1.5.

2. In departments having not less than twelve nor more than twenty-nine permanent, full-time police officers or firefighters, the ratio shall be: 1.8.

3. In departments having thirty or more permanent, full-time police officers or firefighters, the ratio shall be: 2.0.

The provisions of this section relative to a city, town or fire district shall be in effect only in a city, town or fire district which accepts this section.

Added by St.1971, c. 1082. Amended by St.1974, c. 415, § 1; St.1974, c. 610, § 1; St.1975, c. 333, § 1; St.1991, c. 412, § 53.

§ 69. Taxation; purposes

Such districts may, at meetings called therefor, raise money by taxation for the purchase of engines and other articles necessary for the extinguishment of fires, for hydrant and water service, for the purchase of land, for the erection and repairs of necessary buildings, for the erection and maintenance of street lamps within their limits, for the purchase, operation and maintenance of ambulances, for the payment of a proper charge of an insurance company for acting as surety on an official bond which may be given to such district by any of its officers, and for other incidental expenses of the fire department. The prudential committee of such district may accept an insurance company as sufficient surety upon such bond.

Amended by St.1959, c. 91.

Historical and Statutory Notes

St.1844, c. 152, § 12.
G.S.1860, c. 24, § 43.
St.1864, c. 159.
St.1874, c. 151, § 1.
P.S.1882, c. 35, § 51.
St.1895, c. 295.
St.1901, c. 76.
R.L.1902, c. 32, § 59.

CHAPTER 53

NOMINATIONS, QUESTIONS TO BE SUBMITTED TO THE VOTERS, PRIMARIES AND CAUCUSES

Selected section

Section
18B. Information relating to questions on city, town or district ballot; contents; written arguments by principal proponents and opponents; public inspection.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 18B. Information relating to questions on city, town or district ballot; contents; written arguments by principal proponents and opponents; public inspection

(a) As used in this section "governing body" shall mean, in a city, the city council or board of aldermen acting with the approval of the mayor subject to the charter of the city, in a town having a town council, the town council, in every other town, the board of selectmen and in a district as provided in sections 113 to 119, inclusive, of chapter 41, the prudential committee, if any, otherwise the commissioners of the district.

(b) The governing body of a city, town or district which accepts this section in the manner provided in section 4 of chapter 4 shall print information relating to each question that shall appear on the city, town or district ballot. The information shall include: (1) the full text of each question; (2) a fair and concise summary of each question, including a 1 sentence statement describing the effect of a yes or no vote, which shall be prepared by the city solicitor, town counsel or counsel for the city, town or district; and (3) arguments for and against each question as provided in subsections (d) and (e). Not later than 7 days before an election at which the question shall be submitted to the voters in a city, town or district, the information in this subsection shall be sent to each household wherein a person whose name appears on the current voting list for the city, town or district resides.

(c) Not later than the day following the date of the determination that a question shall appear on the ballot in an election, the governing body shall provide written notification to the city solicitor or town or district counsel and to the city or town clerk.

(d) Not later than 7 days after the determination that a question shall appear on the ballot, the city solicitor or town or district counsel, as applicable, shall seek written arguments from the principal proponents and opponents of the question. For the purposes of this section, the principal proponents and opponents of a question shall be those persons determined by the solicitor or counsel to be best able to present the arguments for and against the question. The solicitor or counsel shall provide not less than 7 days' written notice to the opponents and proponents of the date on which the written arguments shall be received. Proponents and opponents shall submit their arguments, which shall be not more than 150 words, to the solicitor or counsel, together with a copy thereof to the city or town clerk or, in a district, to the clerk of each city and town within the district. The arguments and summary shall be submitted by the solicitor or counsel to the governing body at least 20 days before the election for distribution to voters in accordance with subsection (b). A copy of the arguments and summary shall also be submitted by the solicitor or counsel to the city, town or district clerk.

(e) In determining the principal proponents and opponents of a ballot question, the solicitor or counsel shall contact each ballot question committee, if any, as defined in section 1 of chapter 55. The principal proponents or opponents of a ballot question may include officers of a ballot question committee or officers of a city, town or district office or committee including, but not limited to, a finance committee or a school committee. In addition, the principal proponents or opponents may include the first 10 signers or a majority of the first 10 signers of a petition initiating the placement of such question on the ballot. The solicitor or counsel shall determine, based on a review of arguments received, the person or group best able to present arguments for and against a question. If no argument is received by the solicitor or counsel within the time specified by the solicitor or counsel, the solicitor or counsel shall prepare an argu-

ment and submit the argument to the governing body and to the city or town clerk or, in a district, to the clerk of each city and town within the district within the time specified in subsection (d).

(f) All arguments filed or prepared pursuant to this section and the information prepared pursuant to subsection (b), shall be open to public inspection at the office of city or town clerk or, in a district, at the office of the clerk of each city and town within the district. In addition, each city or town clerk shall make such information available to the voters at all polling places within the city, town or district.

Added by St.2010, c. 188, § 37, eff. July 27, 2010. Amended by St.2010, c. 409, § 3, eff. Jan. 3, 2011.

CHAPTER 54

ELECTIONS

Selected section

Section

42C. Deadline for ballot questions.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 42C. Deadline for ballot questions

Notwithstanding the provisions of any general or special law to the contrary establishing a later time, the state secretary shall not print on the biennial state election ballot any question to the voters for which he receives final written notice after the sixtieth day before said election. Notwithstanding the provisions of any general or special law to the contrary establishing a later time, a city or town clerk shall not print on a city or town election ballot any question to the voters for which he receives final written notice after the thirty-fifth day before such election.

Added by St.1990, c. 526, § 29. Amended by St.1996, c. 454, § 22.

CHAPTER 58

GENERAL PROVISIONS RELATIVE TO TAXATION

Section

1. Commissioner; establishment of minimum standards of assessment performance.
1A. Commissioner; general powers and duties.
2. Commissioner; annual lists to board of assessors; classifications; objections; appeal.
3. Commissioner; assistance to local assessors.
4. Noncompliance by assessors.
4A. Continued non-compliance with minimum standards by cities or towns; contracts by commissioner; court orders.
4B. Compliance with court orders by cities or towns; provision of services by commissioner.
4C. Costs of services provided by commissioner.
5. Notices and lists; instructing assessors.
6. Real estate values; collecting information.
7. Unpaid taxes; obtaining information; affidavits.
7A to 7E. Repealed.
8. Delinquent collections; proceedings by attorney general; abatement of certain taxes, etc.; expedited abatement procedure for abandoned real property.
8A. Paraplegic veterans; surviving spouses; abatement of taxes; reimbursement of municipalities.
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10B. Appeal to appellate tax board.
10C. Final equalization and apportionment; establishment; report to general court.
11, 12. Repealed.
13. Valuation of certain state and county lands.
14. Notice to assessors; hearings.
15. Effect of determination; newly acquired land; state forests.
15A. Exemptions for certain state lands.

Section

16. Annual statements; state treasurer.
17. Rate of reimbursement.
17A. County tuberculosis hospitals; taxation.
17B. Property taken for flood control; loss of taxes; reimbursement.
17C. Forest Products Trust Fund.
18. Repealed.
18A. Repealed.
18B. Distribution of highway fund; notification of amount required; fractions.
18C. Distribution of Local Aid Fund.
18D. Pari-mutuel wager distribution.
18E. Repealed.
18F. Distributions to cities, towns, or regional school districts; receipt of certification of prior financial reports.
19. Repealed.
20. Repealed.
20A. Deductions from sums payable to cities and towns.
21 to 23. Repealed.
24, 24A. Repealed.
25. Amounts due municipalities; determination; payment.
25A. Amounts due municipalities; annual estimates.
25B. Proceeds of cigarette excise; certification for payment by commissioner of revenue.
26. Repealed.
26A, 26B. Repealed.
27. Repealed.
28. Annual assessments for deposits with state treasurer; trust funds.
28A. Withholding taxes; internal revenue code of United States.
28B. Withholding statements; federal taxes.
28C. Reciprocal enforcement of tax liabilities.
29. Repealed.
30. Repealed.
31. Forms; authority of commissioner.
31A to 51. Repealed.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Commissioner; establishment of minimum standards of assessment performance

The commissioner of revenue in chapters fifty-eight to sixty-five C, inclusive, called the commissioner, shall make, and from time to time revise, such reasonable rules, regulations and guidelines, as may be necessary to establish minimum standards of assessment performance. The specific areas to which such standards relate shall include but not be limited to the following: the administration of all laws providing for the assessment and classification of property; the methods of determining the actual fair cash valuation of different kinds of property for tax purposes; the types of qualifications of assessing personnel; and the adequacy of tax maps and other records.

Amended by St.1932, c. 180, § 9; St.1937, c. 108, § 2; St.1943, c. 428, § 2; St.1971, c. 895, § 1; St.1975, c. 684, § 30; St.1978, c. 514, § 34; St.1978, c. 580, § 1; St.1979, c. 797, § 3.

Historical and Statutory Notes

St.1898, c. 507, § 3.
R.L.1902, c. 14, § 5.
St.1908, c. 433, §§ 1, 2.
St.1908, c. 550, § 2.
St.1909, c. 490, pt. 3, § 5.
St.1916, c. 173.
St.1918, c. 257, § 32.
St.1919, c. 5.

St.1919, c. 350, §§ 53 to 55.
St.1920, c. 2.
St.1931, c. 426, § 64.

§ 1A. Commissioner; general powers and duties

The commissioner, in addition to exercising the powers or performing the duties otherwise assigned to him, shall enforce all laws relating to the valuation, classification and assessment of property and shall supervise the administration of such laws by local assessors in accordance with the rules, regulations and guidelines established under the provisions of section one.

He shall determine whether or not the locally assessed values represent the full and fair cash valuation for each class of real property, as defined in section two A of chapter fifty-nine, and personal property not exempt from local taxation within each city and town. In each city and town which he has determined to be assessing at full and fair cash valuation, he shall determine a minimum residential factor for each city and town which shall be sixty-five per cent subject to such adjustment upward as may be required to provide that the percentage of the total tax levy imposed on any class of real or personal property shall not exceed one hundred fifty per cent of the full and fair cash valuation of the taxable property in said class divided by the full and fair cash valuation of all taxable real and personal property in the city or town. If adoption of said minimum residential factor would result in the residential property class bearing a higher percentage of the total property tax levy than the percentage of the total property tax levy imposed on the residential property class in the prior year, or if the adoption of said minimum residential factor would result in the residential property class bearing a higher percentage of the total property tax levy than the percentage of the total property tax levy imposed on the residential property class in the year prior to the year in which the minimum residential factor was first adopted, he shall determine a new minimum residential factor which shall be fifty per cent subject to an upward adjustment as may be required a) to provide that the percentage of the total tax levy imposed on any class of real or personal property shall not exceed one hundred and seventy-five per cent of the full and fair cash valuation of the taxable property of said class divided by the full and fair cash valuation of all taxable real and personal property in the city or town, or b) to provide that the adoption of said minimum residential factor shall not result in the residential property class bearing a lower percentage of the total property tax levy than the lowest percentage of the total property tax levy imposed on the residential property class in the years since he first certified that the locally assessed values represented the full and fair cash value. In no instance, however, shall the minimum residential factor, so determined, be greater than the amount of one hundred per cent, although a city or town may decide to adopt a residential factor greater than that amount. For this purpose, he may utilize the information on assessed values and classifications gathered pursuant to sections nine and ten and such other information as may be available to him. The taxable values and minimum residential factor so determined shall be sent to the individual cities and towns on or before April first of each year in which there is to be a determination of the percentages of the local tax levy to be borne by each class of property pursuant to section fifty-six of chapter forty.

In the performance of such duties, he may visit any city or town, inspect the work of its assessors and require of them any information he shall deem necessary regarding the procedures used in keeping records, maintaining tax maps and determining the valuation and classification for taxation of the property or any part thereof in such city or town. He shall require of them such action as will tend to produce uniformity within such city or town and throughout the commonwealth in the valuation, classification and assessment of property for local taxation.

He may require from state and town officers such returns and statements relative to the amount and value of taxable property in the several towns as he deems necessary. Information provided by said assessors shall include: (1) the total of all property subject to local taxation in each city and town, (2) the amount, if any, of tax abatements for the preceding year, and (3) such other information as may be required to aid the commissioner in the discharge of his responsibility in respect to the preparation of the equalization and apportionment report as provided in sections nine and ten.

He shall, at the request of the assessors of any city or town or upon his own initiative, give his opinion to assessors and collectors upon any question arising under any statute relating to the assessment, classification and collection of taxes or he may obtain the opinion of the attorney general upon such question. In either case, the opinion of

the commissioner or the opinion of the attorney general, if any, shall be binding.

He shall issue, and may from time to time revise, a list of private firms or individuals qualified to perform appraisals or reappraisals of property for tax purposes in the commonwealth and shall make such list available to assessors. In any case where a city or town proposes to contract with any such private firm or individual for such appraisal or reappraisal services, such contract shall be with a firm or individual determined by the commissioner to be qualified to perform such services and said contract shall be approved as to form and content by the commissioner. Upon completion, he shall certify that valuations established under such appraisal or reappraisal of property for tax purposes by any such firm in the commonwealth comply with guidelines established under section one. Firms or individuals aggrieved by a decision of the commissioner that they are not qualified to perform appraisals or reappraisals of property for tax purposes in the commonwealth may appeal such decision to the appellate tax board.

He may cause an assessor to be prosecuted, either in the county where said officer resides or in an adjoining county, for any violation of law relative to assessment or classification of taxes for which a penalty is imposed. He may appear before any court or before any board of county commissioners sitting for the abatement of taxes, or before the appellate tax board.

Added by St.1979, c. 797, § 3. Amended by St.1980, c. 261, § 4; St.1988, c. 200, § 1.

§ 2. Commissioner; annual lists to board of assessors; classifications; objections; appeal

The commissioner shall annually, on or before April first of each year, forward to each board of assessors a list of all corporations known to him to be liable on January first of said year to taxation under chapters fifty-nine, sixty A and sixty-three. Such list shall indicate which of said corporations have been classified by the commissioner as manufacturing corporations and shall contain such other information as in his judgment will assist such boards of assessors in the assessment of taxes. The operation of a solid waste disposal facility, as defined in section eighteen of chapter sixteen, or the production of any material or other product therefrom which is usable or marketable shall not be deemed to be a manufacturing activity for the purposes of this section.

Any person aggrieved by any classification made by the commissioner under any provision of chapters fifty-nine and sixty-three or by any action taken by the commissioner under this section may, on or before April thirtieth of said year or the thirtieth day after such list is sent out by the commissioner, whichever is later, file an application with the appellate tax board on a form approved by it, stating therein the classification claimed.

The appellate tax board shall, within ten days after the decision on said application, give written notice thereof to the applicant. The decision of the board shall be binding upon the parties to any proceeding pending or brought before it which involves a tax for the year to which the decision is applicable. For the purpose of this section, "person" shall include a board of assessors.

Amended by St.1933, c. 254, § 18; St.1941, c. 726, § 2; St.1953, c. 654, § 5; St.1958, c. 490, § 1; St.1965, c. 696, § 1; St.1969, c. 537, § 1; St.1975, c. 102; St.1975, c. 684, § 31; St.1978, c. 514, § 35.

Historical and Statutory Notes

St.1867, c. 188, § 2.
St.1870, c. 144, § 1.
P.S.1882, c. 13, §§ 3, 4.
R.L.1902, c. 14, § 4.
St.1906, c. 271, § 1.
St.1908, c. 468.
St.1909, c. 490, pt. 3, § 4.
St.1914, c. 198, § 2.

§ 3. Commissioner; assistance to local assessors

In order to assist the assessors in the performance of their duties, the commissioner shall prepare, issue and periodically revise guides for local assessors. Such guides shall include the rules, regulations, and guidelines of the commissioner relative to the assessment, classification and administration of local taxes, an appraisal manual and, in addition, may include special studies, cost and price schedules, news and reference bulletins and digests of laws relating to local taxation. He shall prepare and issue such other printed instructions to the assessors which are adapted to varying local circumstances and to differences in the character and condition of property subject to local taxation as he shall deem necessary.

He shall conduct or sponsor in-service, pre-entry, and intern training programs on the technical, legal, and administrative aspects of the assessment process and may require assessors to attend such programs. Such programs shall include but not be limited to training required to meet minimum standards of assessment and classification performance

established in accordance with section one. The commissioner may contract with educational institutions or appropriate professional associations to provide such training programs. He shall develop, prescribe, and require the use of all forms necessary for administration of the laws relating to the taxation of property. So far as practicable, the forms shall be uniform, but nothing herein shall be deemed to prevent the prescribing of substitute or additional forms where special circumstances require.

He shall annually, on or about January first, furnish to each board of assessors all the information relating to the assessment, classification, valuation and ownership of property taxable in their town that has come into possession of his department, particularly under chapter sixty-five and sixty-five C.

He shall cause a representative of his office to visit every city or town to give to the assessors such assistance as may be authorized or required by law.

Amended by St.1933, c. 254, § 19; St.1963, c. 660, § 5; St.1971, c. 926; St.1974, c. 740; St.1975, c. 684, § 32; St.1977, c. 992, § 1; St.1978, c. 580, §§ 2, 3; St.1979, c. 797, § 4.

Historical and Statutory Notes

St.1908, c. 550, § 4.
St.1909, c. 490, pt. 3, § 6.
St.1914, c. 198, § 2.
St.1919, c. 350, §§ 54, 55.

§ 4. Noncompliance by assessors

Whenever it appears to the commissioner that the property, or any part thereof, in any town is not valued for taxation according to the first paragraph of section thirty-eight of chapter fifty-nine, and that such failure to comply with the law is the result of failure of the city or town to meet the minimum standards prescribed by the commissioner under the provisions of section one, including but not limited to minimum standards for keeping records of valuation, classification and ownership, production and maintenance of tax maps, and use of the opinions guides, manuals or other information furnished the assessors under the provisions of sections one A and three by the commissioner, or is due to failure on the part of its assessors, or any of them, to properly examine the records of the registry of deeds and probate court, he shall forthwith direct said assessors to meet the minimum standards required, to make use of the opinions, guides, manuals or other information furnished by him, and to make such examinations of the records of the registry of deeds and probate court as he deems necessary to correct the failure of the town to value any or all of the property for taxation according to law. On failure by the assessors, or any of them, to comply with such directions of the commissioner, for any reason, he shall forthwith notify the mayor or the selectmen, in writing, of said failure and of any requirements which he deems necessary or expedient to insure proper performance, valuation and classification of property for taxation according to law. Such notice shall contain a statement that failure of the town to comply with such requirements will result in court action.

At the request of local assessors, he shall contract on behalf of the city or town for engineering, professional or technical services for the installation of such record keeping system, the production and installation of tax maps, the appraisal or reappraisal of property, or such other action as is required for the town to meet the minimum standards prescribed.

Amended by St.1978, c. 580, § 4; St.1979, c. 797, § 5; St.1980, c. 261, §§ 5, 6.

Historical and Statutory Notes

St.1908, c. 550, § 3.
St.1909, c. 490, pt. 3, § 7.

§ 4A. Continued non-compliance with minimum standards by cities or towns; contracts by commissioner; court orders

If such city or town fails, within a reasonable time, to comply with the notice and requirements of the commissioner and continues to fail to meet the minimum standards provided in section one and to value property for taxation in violation of section thirty-eight of chapter fifty-nine, (a) the commissioner may contract on behalf of the city or town to provide engineering, professional or technical services for the installation of such record keeping systems, the production and installation of tax maps, the appraisal or reappraisal of property, or such other action as he has required for the town to meet the minimum standards prescribed, or (b) a single justice of the supreme judicial court may, on the petition of the commissioner, order the mayor or selectmen to comply with the requirements of the commissioner or order its assessors to value property for taxation at its fair cash valuation and to classify real property according to use and to meet the minimum standards necessary to accomplish this within a definite period of time to be

determined by the court. The commissioner shall file with his petition copies of his directions to the assessors and of his notice to the mayor or selectmen under the provisions of section four, together with such other evidence in his possession which he has collected in accordance with sections one A and six as will be helpful to the court in determining whether or not such an order should be issued.
Added by St.1979, c. 797, § 5. Amended by St.1980, c. 261, § 6A.

§ 4B. Compliance with court orders by cities or towns; provision of services by commissioner

A city or town whose mayor or selectmen and assessors have been ordered by the court under section four A to comply with the requirements of the commissioner may request said commissioner to provide engineering, professional or technical services for the installation of such record keeping systems, the production and installation of tax maps, the appraisal or reappraisal of property, the classification of property, or such other action as may be necessary for such city or town to comply with such court order.
Added by St.1979, c. 797, § 5.

§ 4C. Costs of services provided by commissioner

Whenever the commissioner provides any service under the provisions of section four, four A or four B, the costs of such services shall be incurred by the commonwealth; and payment therefor shall be deducted by the state treasurer under the provisions of section twenty A of chapter fifty-eight from any amount distributable or payable by the commonwealth to such city or town.

Whenever, in the opinion of the commissioner, it is necessary for an assessor to attend any training program under the provisions of section three, the registration fees, costs of study material and necessary travel expense shall be paid by the city, town or district of such assessor.
Added by St.1979, c. 797, § 5. Amended by St.1980, c. 261, § 7.

§ 5. Notices and lists; instructing assessors

The commissioner shall annually give instructions for preparing the notice and bringing in the lists required by section twenty-nine of chapter fifty-nine, and shall prescribe forms therefor so arranged that the statement of the person bringing in such a list will include all assessable property held by him. The commissioner shall cause to be printed and distributed to assessors forms for the lists and statements required therein relative to property held for literary, temperance, benevolent, charitable or scientific purposes.

Historical and Statutory Notes

St.1882, c. 217, § 3.
St.1894, c. 294.
R.L.1902, c. 12, § 42.
St.1909, c. 490, pt. 1, § 42.
St.1909, c. 515.

§ 6. Real estate values; collecting information

The commissioner may collect and tabulate information as to the classification, sales price and fair cash value of real estate in the several towns. For this purpose he may require assessors to furnish him with any information in their possession, may consult persons likely to have knowledge as to the classification, sales price and fair cash value of separate parcels of real estate, and may examine probate and other relevant records.
Amended by St.1978, c. 580, § 5; St.1979, c. 797, § 6.

Historical and Statutory Notes

St.1917, c. 171.

§ 7. Unpaid taxes; obtaining information; affidavits

The commissioner shall from time to time secure information as to any unpaid taxes in any town, may examine the books, records and papers of collectors and assessors, and of other town officers, and may require them to make reports to him.

The commissioner may annually obtain from local officials at the expense of the commonwealth copies of all affidavits executed under section thirty-six of chapter fifty-one, and shall include the information obtained from such affidavits in any examination of tax records so as to insure the payment of taxes by all domiciliaries of the commonwealth. The commissioner shall also forward a copy of such list of residents to the registrar of motor vehicles.
Amended by St.1983, c. 233, § 10.

Historical and Statutory Notes

St.1912, c. 272, § 1.

§§ 7A to 7E. Repealed, 1979, 797, Sec. 7

§ 8. Delinquent collections; proceedings by attorney general; abatement of certain taxes, etc.; expedited abatement procedure for abandoned real property

Whenever it appears to the commissioner that at the end of two years from the commitment of any

warrant to a collector any taxes upon such warrant remain uncollected, or if collected have not been turned over to the town treasurer, the commissioner shall within three months bring the matter to the attention of the attorney general, who may bring or cause to be brought an action of contract in the name of the town against the collector and upon his bond, in the superior court for the county where the town lies. Any amount recovered under this section shall be paid into the treasury of the town in whose name the action is prosecuted; but all reasonable expenses incurred by the attorney general in any such action shall be borne by the town, and may be recovered from it by the commonwealth in contract. If, at any time after any tax, assessment, rate or other charge has been committed to a collector such tax, assessment, rate or charge, or any interest thereon or costs relative thereto, remains unpaid and the commissioner is of the opinion that such tax, assessment, rate, charge, costs or interest should be abated, he may, in writing, authorize the assessors or the board or officer assessing such tax, assessment, rate or charge, to abate any part or the whole of such tax, assessment, rate, charge, costs or interest, whether or not the same is secured by a tax title held by the town. Whenever in the opinion of the commissioner, the assessors or the board or officer assessing a tax, assessment, rate or charge have made an obvious clerical error and such tax, assessment, rate or charge has been paid, the commissioner may, in writing, authorize the assessors or such board or officer to abate any part or the whole of such tax, assessment, rate or charge for a period not to exceed the three fiscal years preceding the year of the application to the commissioner; provided, however, that no interest shall be due in connection with any such abatement. The assessors or the board or officer aforesaid may thereupon make the abatement authorized and enter the same in their or his record of abatements, making reference in said record to such authorization as the cause or reason for the abatement. If there is more than one such tax, assessment, rate or charge, the abatement may be authorized and made either by items or by a sum total, stated in such written authorization. Whenever authority to abate is granted under this section, the commissioner shall forthwith give written notice of the grant of such authority to the collector, and, if the tax, assessment, rate, charge, costs, or interest involved is secured by a tax title held by the town, also to the treasurer.

The commissioner shall make and from time to time revise, rules, regulations and guidelines necessary for establishing an expedited procedure for granting authority to abate taxes, assessments, rates, charges, costs or interest under this section in such cases as the commissioner determines are in the public interest and shall from time to time for such periods as the commissioner considers appropriate authorize the assessors or the board or officer assessing the tax, assessment, rate or charge to grant these abatements. No abatement authorized by these procedures shall be granted unless the assessors or board or officer shall certify, in writing, under pains and penalties of perjury that the procedures have been followed. The commissioner shall require yearly reports and audits of these abatements by assessors or boards or officers that the commissioner considers necessary to ensure that any authority granted under this paragraph has been properly exercised and shall withdraw this grant of authority to the particular assessors, board or officer upon his written determination that the authority has been improperly exercised. The commissioner may make and from time to time revise, reasonable rules, regulations and guidelines that he considers necessary to carry out this paragraph.

Amended by St.1935, c. 322, § 1; St.1945, c. 351, § 2; St.1953, c. 654, § 6; St.1978, c. 514, § 37; St.1984, c. 465, § 1; St.1986, c. 353; St.1989, c. 341, § 30; St.1990, c. 490; St.2010, c. 188, § 38, eff. July 27, 2010.

Historical and Statutory Notes

St.1912, c. 272, §§ 2, 3.
St.1918, c. 257, § 33.
St.1919, c. 5.
St.1920, c. 2.
St.1922, c. 34.
St.1923, c. 283.
St.1931, c. 133.

§ 8A. Paraplegic veterans; surviving spouses; abatement of taxes; reimbursement of municipalities

The state treasurer shall annually reimburse each city and town for the amount of taxes lost by such city or town through an abatement to a paraplegic veteran or the surviving spouse of such paraplegic veteran, authorized by the commissioner of revenue and granted under the provisions of section eight.

Added by St.1951, c. 500. Amended by St.1957, c. 687; St.1977, c. 727; St.1977, c. 889, § 1; St.1978, c. 514, § 38.

§ 8B. Reimbursement claims by cities and towns; filing; time limitation

All reimbursement claims to which a city or town may be entitled on account of exemptions and abatements granted under section five of chapter fifty-nine shall be filed with the commissioner of revenue on or before the end of the fiscal year to which said claims relate.

Added by St.1974, c. 487, § 1. Amended by St.1978, c. 514, § 39.

§ 8C. Affordable housing sites; abatement of real estate tax obligations

A city or town may establish, relative to sites or portions of sites that will be used as affordable housing, as defined in section 1 of chapter 60, or affordable housing and commercial, an agreement between the city or town and the developer of said sites or portions of sites, regarding the abatement of up to 75 per cent of the real estate tax obligations and up to 100 per cent of the outstanding interest and penalties on said sites or portions of sites, if the commissioner has approved in writing the request of the city or town to grant the abatement. Upon the written request of a city or town to grant such an abatement, the commissioner shall make a determination within 30 days from the date of the receipt of the request or the request shall be deemed approved. The agreement, for the purpose of developing affordable housing on such sites and redevelopment in such communities, shall include, but shall not be limited to, the amount outstanding, the per cent of interest to accrue if determined applicable by the parties, the description of quantifiable monthly payments, the inception date of such payments, the date of the final payment, late penalties, the number of affordable units, and any other contractual obligations arranged between the parties. The terms of repayment shall be set at the discretion of the municipality and shall be included in the agreement between the parties. A city or town that accepts this section shall adopt an ordinance or by-law specifying the method for negotiating and approving agreements under this section. Copies of each such agreement shall be signed by the municipal officer required by the ordinance or by-law and by the owner of the property in question, notarized, attested to by the city or town clerk, and provided to the department of housing and community development, the commissioner, the city council or board of selectmen, and the owners of the property in question. An abatement under this paragraph may be granted only for a new owner of a parcel who is not liable for any of the outstanding charges secured by the municipality's lien. This section shall take effect in any city or town only upon its acceptance by such city or town. The commissioner, in consultation with the department of housing and community development, may make, and from time to time revise, such reasonable rules and regulations that are consistent with provisions of the preceding paragraph as he deems necessary to carry out the provisions of this paragraph.

Added by St.2002, c. 2, § 1.

§ 9. Proposed equalized valuation; establishment

In the year nineteen hundred and sixty-six and in every second year thereafter, the commissioner shall, on or before June first, determine and establish for each city and town a proposed equalized valuation which shall be the fair cash value of all property in such city or town subject to local taxation as of January first in such year.

Added by St.1966, c. 14, § 43. Amended by St.1978, c. 514, § 40; St.1987, c. 712, § 1.

§ 10. Determination of equalized valuation

In determining the equalized valuations required by section nine, the commissioner shall make and issue such comprehensive assessment ratio studies of the average level of assessment, the degrees of assessment, uniformity, and over-all compliance with assessment and classification requirements for each major class of property in each city and town of the commonwealth as he shall deem appropriate to indicate the degree of compliance with the law and rules and regulations for the assessment and classification of property in each city and town.

For the purposes of this section, the commissioner shall collect and tabulate information relative to all sales of real estate and shall also cause appraisals to be made of properties of various classes in each city and town sufficient in number and so selected, by random sampling or otherwise, as to (a) confirm the assessment ratio derived from selling prices, (b) assist in determining assessment ratio wherever the number of sales is insufficient to represent all properties of any specific class in a city or town, (c) provide a substitute for selling prices of properties of a unique character or which are sold at infrequent intervals, and (d) establish an assessment ratio for personal property assessed in each city or town.

The commissioner may require from state, city and town officers and from individual property owners such returns and statements relative to the amount and value of taxable property and the income derived therefrom in the several cities and towns as he deems necessary. If a city or town fails to submit such information in its possession or which it can reasonably be expected to obtain as the commissioner requests in writing for use in determining the equalized valuations required by section nine and such failure continues for thirty days after such written request, such city or town shall not have a right to submit testimony to the commissioner as provided under section ten A and the decision of the commissioner with respect to such city or town shall be final.

Added by St.1966, c. 14, § 43. Amended by St.1968, c. 256, § 1; St.1978, c. 514, § 41; St.1978, c. 580, § 7; St.1979, c. 797, § 8.

§ 10A. Proposed equalized valuation; notice and hearing; changes

On or before June tenth, in each year in which an equalization is to be established, the commissioner shall hold a public hearing on the proposed equalized valuations. He shall send written notice thereof, together with a copy of the proposed equalized valuations, to the assessors of each city and town on or before June first of such year. The commissioner may, on the basis of any new information furnished to him at such hearing or otherwise, change the proposed equalized valuation of any city or town. Notice of any change shall be sent to the assessors of such city or town on or before July twentieth next following.

Added by St.1966, c. 14, § 43. Amended by St.1978, c. 514, § 42; St.1979, c. 283, § 1; St.1982, c. 47, § 1.

§ 10B. Appeal to appellate tax board

On or before August tenth next following, a city or town aggrieved by the equalized valuation established by the commissioner under sections nine and ten A may appeal the determination of the commissioner to the appellate tax board. The appellant shall have the burden of proving that the equalized valuation of such city or town is substantially different from the commissioner's determination. Every such appeal shall be decided by the board not later than January twentieth of the year next following the year in which it is filed. If the board fails to act upon an appeal within said time, it shall be deemed to be a denial of such appeal. The decision of the board shall be final.

Added by St.1966, c. 14, § 43. Amended by St.1978, c. 514, § 42; St.1979, c. 283, § 2; St.1982, c. 47, §§ 2, 3.

§ 10C. Final equalization and apportionment; establishment; report to general court

On or before January thirty-first of the year next following the year for which an equalization is to be established, the commissioner shall, on the basis of the equalized valuations determined under sections nine and ten A, as modified by the appellate tax board under section ten B, establish a final equalization and apportionment upon the several cities and towns as of January first of such year of the fair cash value of all property in the commonwealth subject to local taxation, the fair cash value of all such property in each city and town, the ratio which the fair cash value of all such property in each city or town bears to the fair cash value of all such property in the commonwealth, and the proportion of county tax, which should be assessed upon each city and town. Prior to establishing a final equalization and apportionment, the commissioner shall add to the equalized valuations so determined the fair cash value of all property subject to the excise imposed by section ten of chapter one hundred and twenty-one A and said property shall, for the purpose of this section only, be deemed property subject to local taxation. The fair cash value of said property shall be established by the commissioner at an amount no higher than that which would result if the owner thereof were paying a tax under the provisions of chapter fifty-nine equal to the total payments made to the city or town under chapter one hundred and twenty-one A in the most recent calendar year, and if all property actually subject to local taxation in such city or town were being assessed at the equalized valuation determined by the commissioner hereunder. The equalized valuations and apportionments so established shall be the basis for all state, county or district assessments, distributions and appropriated grants and reimbursements which are based on equalized valuations and apportionments, in the next two-year period and until another equalization and apportionment has been established.

Added by St.1966, c. 14, § 43. Amended by St.1974, c. 492, § 5; St.1978, c. 514, § 42; St.1979, c. 383, § 1; St.1980, c. 403, § 1; St.1980, c. 456, § 1; St.1982, c. 47, §§ 4, 5; St.2004, c. 262, §§ 5, 6, eff. Aug. 9, 2004.

§§ 11, 12. Repealed, 1941, 609, Sec. 1

§ 13. Valuation of certain state and county lands

In 2005 and every fourth year thereafter, the commissioner shall, on or before June first, determine as of January first the fair cash value as hereinafter provided of all land in every town owned by the commonwealth and used for the purposes of a fish hatchery, game preserve or wild life sanctuary, a state military camp ground, the Soldiers' Home in Massachusetts, the Soldiers' Home in Holyoke, a state forest, the University of Massachusetts, or a public institution under the department of correction, the department of education, the department of mental health, the department of developmental services, the department of public health, the department of public welfare, or the department of youth services, land owned by the commonwealth known as the Wachusett Mountain State Reservation and the Mount Greylock State Reservation, Blue Hills Reservation, and the Middlesex Fells Reservation and of all land owned by the commonwealth and under the care and control of the department of environmental management and used for recreational or conservation purposes; and of all land held by the county commissioners for hospital purposes under sections seventy-eight to ninety, inclusive, of chapter one hundred and eleven; and of all land held by the department of environmental protection for use as a solid waste disposal facility under sections eighteen through twenty-four, inclusive, of chapter sixteen; and of any land acquired by the low-level radioactive waste management board pursuant to paragraph (g) of section twenty-three of chapter one hundred and eleven H.

As used in this section, "land" shall not include buildings, structures, improvements or other things erected thereon or affixed thereto.

The determination of value made under this section shall be in such detail as to lots, subdivisions or acreage as the commissioner may deem necessary. To assist in making such determination the commissioner may require oral or written information from any officer or agent of the commonwealth or of any county or town therein and from any other inhabitant thereof, and may require such information to be on oath. Such officers, agents and persons, so far as able, shall furnish the commissioner with the required information in such form as he may indicate, within fifteen days after being so requested by him. No reimbursements hereunder on account of lands owned by the commonwealth and under the care and control of the department of conservation and recreation and used for recreational or conservation purposes shall be made from the Inland Fisheries and Game Fund.

Amended by St.1933, c. 254, § 20; St.1945, c. 564; St.1953, c. 654, § 9; St.1955, c. 467; St.1956, c. 701, § 1; St.1960, c. 593, § 1; St.1969, c. 834, § 3; St.1969, c. 838, § 9; St.1971, c. 984, § 1; St.1974, c. 492, § 6; St.1975, c. 706, §§ 108, 109; St.1978, c. 514, §§ 43, 44; St.1986, c. 599, § 18; St.1987, c. 549, § 2; St.1987, c. 584, § 15A; St.1990, c. 177, § 131; St.2003, c. 26, § 187, eff. July 1, 2003; St.2004, c. 262, § 7, eff. Aug. 9, 2004; St.2004, c. 352, § 23, eff. Sept. 17, 2004; St.2005, c. 106, § 12, eff. Oct. 20, 2005; St.2008, c. 451, § 47, eff. Jan. 5, 2009.

Historical and Statutory Notes

St.1910, c. 607, §§ 1, 2.
St.1921, c. 486, § 15.
St.1923, c. 271, § 1.
St.1931, c. 426, § 179.

§ 14. Notice to assessors; hearings

The commissioner, not later than June 1 of each year in which he makes such a determination, shall notify the assessors of each city or town where the commonwealth owns, or the county commissioners hold, land for the purposes stated in this section, of his determination of the value of such land in such city or town. He shall hold a public hearing on such valuation on or before June 10 next following and shall include notice of the public hearing in the notification of his determination to the assessors. The commissioner may, on the basis of any new information furnished to him at the hearing or otherwise, change the valuation of any such land in a city or town. Notice of any such change shall be sent to the assessors of the city or town on or before July 20 next following. A board of assessors aggrieved by a determination of the value of any land as valued under section 13 or 15 may make a written application for a correction to the appellate tax board on or before August 10 next following, setting forth the grounds for correction. Not later than January 20 of the year next following the year in which it is filed, the board shall, upon the basis of such application or after the assessors' hearing, as the board may determine, make a finding whether the commissioner acted in accordance with section 13. If the board finds that the commissioner failed so to act, it shall thereupon make a determination of value in accordance with section 13 and shall notify the board of assessors and the commis-

sioner of its determination, and its decision shall be conclusive.

With respect to the determination of the value of land held by the division of watershed management in the department of conservation and recreation for the purposes named in section 5G of chapter 59, the commissioner shall send the notice of such valuations required by this section to be sent to the assessors of each city or town where such land is held to the division and the division may, if aggrieved by a determination of the value of such land, also apply for a correction to the appellate tax board. Any application by the assessors and division for correction of the valuation of land held for the purposes named in said section 5G of said chapter 59 shall be made and acted upon in the manner provided in this section, except that every application shall name as appellees the commissioner of revenue and all parties, other than the appellant, to whom notice of valuation was required to be sent. Any notices issued by the appellate tax board shall be sent to the appellant and all named appellees.

Amended by St.1939, c. 451, § 15; St.1953, c. 654, § 10; St.1974, c. 492, § 6; St.1978, c. 514, § 45; St.1981, c. 506; St.2004, c. 262, § 8, eff. Aug. 9, 2004.

Historical and Statutory Notes

St.1910, c. 607, § 3.
St.1911, c. 478, § 2.
St.1923, c. 271, § 2.
St.1930, c. 416, § 5.

§ 15. Effect of determination; newly acquired land; state forests

The valuation determined under sections thirteen and fourteen shall be in effect for the purposes of sections seventeen and seventeen A during the year in which such valuation is made and the 3 succeeding years, and until another valuation is made under said sections thirteen and fourteen, except that whenever land is acquired by the commonwealth or by county commissioners for the purposes set forth in section thirteen the commissioner shall adopt the assessed valuation of said land made in the year last preceding such acquisition, and such assessed valuation shall be the valuation of the land for the purposes of said sections seventeen and seventeen A, until a new valuation is made by the commissioner or by the appellate tax board under said section thirteen or fourteen; provided, that as to land used for a state forest such assessed valuation shall be reduced by deducting therefrom the value of all forest products removed from such land between January first on which it was last assessed and January first in the year for which the reimbursement is to be made, the amount thereof to be certified annually before February first to the commissioner by the director of the division of forests and parks in the department of environmental management.

Amended by St.1933, c. 254, § 21; St.1941, c. 490, § 14; St.1953, c. 654, § 11; St.1975, c. 706, § 110; St.1978, c. 514, § 46; St.2004, c. 262, § 9, eff. Aug. 9, 2004.

Historical and Statutory Notes

St.1910, c. 607, § 4.
St.1911, c. 478, § 3.
St.1921, c. 282, § 1.
St.1923, c. 271, § 3.
St.1930, c. 416, § 6.

§ 15A. Exemptions for certain state lands

Notwithstanding any contrary provision of sections thirteen to seventeen, inclusive, land owned by the commonwealth for any of the purposes named in section thirteen which at the time of its acquisition by the commonwealth was exempt from local taxation, except land under the care and control of the division of fisheries and wildlife and used as a game preserve or wildlife sanctuary and which was at the time of its acquisition by the commonwealth under the care and control of the federal government, shall not be included in any determination of valuation under sections thirteen, fourteen or fifteen or in any statement under section sixteen or in any reimbursement under section seventeen.

Added by St.1956, c. 701, § 1A. Amended by St.1963, c. 584, § 3; St.1975, c. 706, § 111.

§ 16. Annual statements; state treasurer

In every year, not later than August first, the commissioner shall deliver to the state treasurer a statement as to the value of land owned by the commonwealth for the purposes named in section thirteen in each town, and of the amount of money to be paid to each of such towns as determined by the following section.

Historical and Statutory Notes

St.1910, c. 607, § 5.
St.1931, c. 426, § 180.

§ 17. Rate of reimbursement

The treasurer in every year, not later than November twentieth, shall reimburse each town in which the commonwealth owns lands for the purposes named in section thirteen an amount in lieu of taxes upon the value of such land as reported to

him by the commissioner under the preceding section, determined by multiplying each thousand dollars of valuation or fractional part thereof by the rate provided for under section fifty-eight of chapter sixty-three.

Historical and Statutory Notes

St.1910, c. 607, § 6.
St.1911, c. 478, § 4.
St.1922, c. 54, § 1.

§ 17A. County tuberculosis hospitals; taxation

The assessors of any town in which county commissioners hold land for the purposes set forth in section thirteen shall assess such land to the county in the annual valuation and tax list at the value determined by the commissioner or the appellate tax board under section thirteen or fourteen, or adopted by the commissioner as provided in section fifteen, and at the tax rate of the town for that year. If notification as provided in said section fourteen is not received by the assessors in time to make the assessment in the manner above provided, the land shall be assessed at said value under the provisions of section seventy-five of chapter fifty-nine. The tax bill for land so assessed shall be sent to the county treasurer who shall pay the same from funds available for carrying out the provisions of section eighty-five of said chapter one hundred and eleven, and such payment shall be deemed a part of the cost of hospital maintenance for said year within the meaning of said section eighty-five.
Amended by St.1939, c. 451, § 26; St.1953, c. 654, § 12; St.1978, c. 514, § 47.

Historical and Statutory Notes

St.1923, c. 271, § 4.
St.1930, c. 416, § 7.

§ 17B. Property taken for flood control; loss of taxes; reimbursement

The state treasurer shall annually, not later than November twentieth, upon certification by the commissioner as hereinafter provided, pay to each town in which property has been taken for flood control reservoirs by the commonwealth under any act, or the United States pursuant to consent granted by the commonwealth under chapter two hundred and eighty-four of the acts of nineteen hundred and thirty-nine, chapter five hundred and ninety-four of the acts of nineteen hundred and forty-eight and chapter six hundred and thirteen of the acts of nineteen hundred and fifty-six, an amount determined by the commissioner as tax losses resulting from the takings. Such losses of taxes as determined by the commissioner shall be based on the then current tax rate in each town in which property has been taken for flood control reservoirs and on the average assessed valuation for a period of five years prior to the acquisition of said land; provided, however, that whenever a town wherein a flood control reservoir or portion thereof is located shall have made a general revaluation of property subject to the annual municipal taxes for such town, the commissioner may use such revaluation for determining the taxes for which payment shall be made. Said commissioner shall annually ascertain said valuation and the amount to be paid to each town, and shall certify the same to the state treasurer not later than November first.

Added by St.1945, c. 592, § 1. Amended by St.1953, c. 654, § 13; St.1959, c. 412, § 1; St.1961, c. 468, § 1; St.1978, c. 514, § 48; St.1978, c. 580, § 8; St.1979, c. 797, § 9.

§ 17C. Forest Products Trust Fund

A Forest Products Trust Fund shall be established on the books of the commonwealth. This fund shall be used to disburse payments to cities and towns within whose boundaries exist state owned forest land. The commissioner of the department of environmental management with the approval of the secretary of environmental affairs shall develop forest management plans for all forest land owned by the commonwealth, its agencies, commissions or authorities, with the exception of land owned by the Massachusetts Water Resources Authority.

(a) Fifty percent of all revenue received by the removal of forest products on land acquired by the commonwealth on or after June 1, 1987 shall be deposited in the Forest Products Trust Fund. Such funds shall be dispersed to those municipalities within whose boundaries the removal of forest products occurs in an amount equal to fifty percent of the revenue received by the commonwealth.

(b) Eight percent of all revenue received by the removal of forest products on land acquired by the commonwealth before June 1, 1987 shall be deposited in the Forest Products Trust Fund. Such funds shall be dispersed to those municipalities within whose boundaries the removal of forest products occurs in an amount equal to eight percent of the revenue received by the commonwealth.

Added by St.1991, c. 138, § 234. Amended by St.2003, c. 26, § 188, eff. July 1, 2003.

§ 18. Repealed, 1969, 546, Sec. 6

§ 18A. Repealed, 1990, 268, Sec. 1

§ 18B. Distribution of highway fund; notification of amount required; fractions

The state treasurer, without further appropriation and upon certification of the commissioner, shall annually distribute to the several cities and towns in accordance with the provisions of section thirty-one of chapter eighty-one that portion of the Highway Fund allocated therefor. Said amount shall be distributed in four equal payments. Said payments shall be made annually, in each fiscal year, on or before September thirtieth, December thirty-first, March thirty-first and June thirtieth.

The commissioner of highways shall notify the commissioner of revenue of the estimated amounts required to be distributed under this section. The commissioner of revenue shall include said amounts in his notification to the assessors of each city and town under section twenty-five A and said amounts shall be included by the assessors in estimated receipts in determining the rate of taxation to be levied upon taxable property in each city and town.

If upon any date of distribution the amount available for distribution under this section is insufficient to make the full distributions required by said section thirty-one of said chapter eighty-one, the distributions thereunder shall be the amount otherwise due each city or town under said section multiplied by a fraction, the numerator of which shall be the amount available for distribution under this section and the denominator shall be the total amount otherwise due for the several cities and towns under the provisions of said section thirty-one of said chapter eighty-one. If upon any date of distribution the amount available for distribution under this section exceeds the amount necessary to make the full distributions required by said section thirty-one of chapter eighty-one, the distributions thereunder shall be the amount otherwise due each city or town under said section thirty-one of chapter eighty-one increased by an amount which shall be the total amount available for distribution less the total amount required for distribution multiplied by a fraction, the numerator of which shall be the amount otherwise due each city or town under said section thirty-one of chapter eighty-one and the denominator of which shall be the amount otherwise due the several cities and towns under said section.

Added by St.1971, c. 497, § 13. Amended by St.1974, c. 492, § 9; St.1978, c. 514, §§ 52, 53; St.1987, c. 737, § 3; St.1991, c. 552, § 39.

§ 18C. Distribution of Local Aid Fund

Commencing with fiscal year nineteen hundred and ninety-three and continuing thereafter, the state treasurer shall, subject to appropriation and upon certification of the commissioner, annually distribute the Local Aid Fund including, but not limited to, forty percent of the sales tax, forty percent of the income tax and forty percent of the corporate income tax as well as the balance of the State Lottery Fund, in accordance with the provisions of this section. The distribution shall be made in four equal payments. Said payments shall be made annually, in each fiscal year, on or before September thirtieth, December thirty-first, March thirty-first and June thirtieth.

(1) The amount distributed under this section to any city or town shall not be less than one hundred percent of the sum of the total amounts actually received by such city or town under sections eighteen A and eighteen C of chapter fifty-eight [1] and section thirty-five of chapter ten for the preceding fiscal year, unless the amount credited to the Local Aid Fund in the current fiscal year is less than the amount credited to the Local Aid Fund, as certified by the commissioner in the preceding fiscal year.

(2) In the event that the amount credited to the Local Aid Fund and appropriated to cities and towns in any fiscal year is greater than the amount credited to the Local Aid Fund and appropriated to cities and towns in the preceding fiscal year, the excess shall be distributed to each city and town as determined by the secretary of administration with the advice and consent of the local government advisory committee operating pursuant to section sixty-two of chapter three.

The distribution shall be made such that each city and town shall receive some portion of the excess funds and such that no city or town shall receive less than such city or town received in the previous fiscal year.

(3) In the event that the amount credited to the Local Aid Fund and appropriated in any fiscal year to cities and towns is less than the amount credited to the Local Aid Fund and appropriated to cities and towns in the preceding fiscal year, then such deficiency shall be applied against each city and

town, such that the distribution to each city and town in the current fiscal year shall equal the distribution in the previous fiscal year, multiplied by a fraction, the numerator of which shall be the total amount available for distribution in the current year and the denominator of which shall be the total amount distributed in the previous fiscal year.

(4) Notwithstanding clause Forty–first of section 7 of chapter 4 or any other general or special law to the contrary, the commissioner of revenue or any official responsible for a local reimbursement or assistance program reported by said commissioner pursuant to section 25A shall use, as appropriate, the most recent city and town population estimates of the United States Bureau of the Census in calculating distributions or assessments under local reimbursement or assistance programs. Such distribution programs shall include, but not be limited to, the chapter 70 school aid program, and aid to regional public libraries. Such assessments shall include, but not be limited to, air pollution control districts, the metropolitan area planning council, the old colony planning council, the Massachusetts Bay Transportation Authority and any other entity for which said commissioner is required to give notice pursuant to said section 25A.

Added by St.1990, c. 268, § 3. Amended by St.1996, c. 450, § 106; St.2001, c. 177, § 18.

[1] G.L. c. 58, § 18A has been repealed.

§ 18D. Pari-mutuel wager distribution

The state treasurer, upon certification by the state racing commission, shall quarterly distribute to each city and town within which racing meetings are conducted, including racing meetings conducted in connection with a state or county fair, under licenses issued under the provisions of chapter one hundred and twenty-eight A, the sum of .35 percent of the total pari-mutuel wager for each such racetrack within said city or town for the three months ending two quarters prior to the quarter for which said distribution is being made, which sum shall be allocated from the commonwealth's share; provided, however, that if the parcel of land containing such racetrack is located in two cities or towns, said sum shall be divided so that two-thirds shall be distributed to the city or town in which the major portion of said parcel is located, and one-third shall be distributed to the other city or town.

Added by St.1981, c. 558, § 5. Amended by St.1982, c. 549; St.1983, c. 594, § 2; St.1993, c. 110, § 108; St.1993, c. 495, § 16; St.2003, c. 26, § 189, eff. July 1, 2003.

§ 18E. Repealed, 1990, 121, Sec. 23

§ 18F. Distributions to cities, towns, or regional school districts; receipt of certification of prior financial reports

No distributions pursuant to sections eighteen A and eighteen E shall be paid to cities or towns after October first of the fiscal year by the state treasurer until said treasurer receives certification from the commissioner of revenue of said commissioner's acceptance of the prior fiscal year's annual financial reports submitted pursuant to the provisions of section forty-three of chapter forty-four.

In the case of regional school districts, distributions pursuant to chapters seventy, seventy-one, seventy-one A, seventy-one B and seventy-four shall not be paid by the state treasurer after October first of the fiscal year until said state treasurer receives certification from said commissioner of revenue of the acceptance of the prior year's annual financial reports as prescribed by the director of accounts.

Added by St.1987, c. 737, § 5.

§ 19. Repealed, 1931, 428, Sec. 1

§ 20. Repealed, 1966, 14, Sec. 31

§ 20A. Deductions from sums payable to cities and towns

If, at the time any amount is distributable or payable by the commonwealth to any city or town, there is due to the commonwealth any sum from such city or town, for any service or cause whatsoever, such sum so due to the commonwealth shall be deducted by the state treasurer from the amount so distributable or payable to the city or town, and shall be applied to the payment of the sum so due to the commonwealth.

Added by St.1936, c. 376, § 3. Amended by St.1966, c. 14, § 34; St.1992, c. 133, § 381.

§§ 21 to 23. Repealed, 1934, 323, Sec. 1

§§ 24, 24A. Repealed, 1951, 641, Sec. 2

§ 25. Amounts due municipalities; determination; payment

The commissioner shall ascertain and determine the amount due to each city and town under sec-

tion eighteen A, notify the treasurer of each city and town of the amount determined to be due to such city or town, or that no amount is due, as the case may be, and certify the amount as determined to the state treasurer, who shall thereupon pay the same in accordance with the provisions of said sections.

Amended by St.1934, c. 323, § 3; St.1939, c. 451, § 17; St.1941, c. 729, § 11; St.1945, c. 624, § 4; St.1945, c. 687; St.1951, c. 641, § 5; St.1953, c. 654, § 16; St.1966, c. 14, § 35; St.1978, c. 514, § 56.

Historical and Statutory Notes

St.1865, c. 283, § 15.
P.S.1882, c. 13, § 58.
St.1898, c. 578, §§ 4, 5.
R.L.1902, c. 14, § 62.
St.1903, c. 437, § 87.
St.1906, c. 463, pt. 2, § 217; pt. 3, § 132.
St.1906, c. 516, § 21.
St.1909, c. 490, pt. 3, § 65.
St.1921, c. 375, § 3.
St.1922, c. 362, § 2.
St.1924, c. 206, § 2.
St.1930, c. 416, § 8.

§ 25A. Amounts due municipalities; annual estimates

Annually on or before March first, the commissioner shall ascertain and determine the amount due each city and town under sections eighteen A, eighteen B, and eighteen C, and the commonwealth's share of local reimbursement and assistance programs as authorized by law and the amount appropriated by the general court, including, but not limited to, school building construction, school transportation, school lunches, educational programs, teachers' retirement pensions, veteran's benefits, public health and housing and urban renewal subsidies, and shall notify the assessors of each city and town thereof. Annually on or before February first each department, commission, board or other agency of the commonwealth administering any local reimbursement or assistance program included under this section for which the commissioner is required to estimate the amount to be received by each city or town shall, upon the basis of information then available to it, estimate and certify to the commissioner of revenue the amount each city and town is to receive from the commonwealth under such program during the next fiscal year. Said assessors, in determining the rate of taxation to be levied upon taxable property for the year, shall include in the estimated receipts lawfully applicable to the payment of expenditures the aforesaid amount.

Amended by St.1934, c. 323, § 4; St.1945, c. 624, § 5; St.1951, c. 641, § 6; St.1953, c. 654, § 17; St.1966, c. 14, § 36; St.1968, c. 566, § 2; St.1969, c. 546, § 8; St.1969, c. 849, § 66; St.1971, c. 813, § 4; St.1973, c. 52, § 4; St.1978, c. 514, § 57; St.1989, c. 341, § 31.

Historical and Statutory Notes

St.1931, c. 428, § 2.

§ 25B. Proceeds of cigarette excise; certification for payment by commissioner of revenue

The commissioner of revenue shall, as hereinafter provided, certify to the state treasurer for payment, from that portion of the proceeds of the excise on cigarettes as authorized by paragraph (b) of section twenty-eight of chapter sixty-four C, the following:—

(a) From time to time when required, the contract assistance to the Massachusetts Bay Transportation Authority provided under section twenty-eight of chapter one hundred and sixty-one A or under other applicable laws, and from time to time when required, the contract assistance to regional transportation authorities, provided under section twenty-three of chapter one hundred and sixty-one B;

(b) From time to time, when required, reimbursements to cities and towns comprising transportation areas as provided under section one hundred and fifty-two A of chapter one hundred and sixty-one, and to the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, as provided under section nine A of chapter seven hundred and one of the acts of nineteen hundred and sixty, as amended;

[There is no subsection (c).]

(d) On or before November twentieth of each year, the amount certified by the commissioner of education to be payable to any city or town as a transportation allowance under the provisions of section seven B of chapter seventy-one.

Added by St.1964, c. 563, § 2. Amended by St.1971, c. 1075, § 1; St.1973, c. 1141, §§ 3, 4; St.1978, c. 514, §§ 58 to 60; St.1989, c. 341, § 32; St.1990, c. 150, § 263.

§ 26. Repealed, 1934, 323, Sec. 1

§§ 26A, 26B. Repealed, 1976, 415, Sec. 99

§ 27. Repealed, 1970, 601, Sec. 1

§ 28. Annual assessments for deposits with state treasurer; trust funds

The commissioner shall annually assess upon every corporation or organization required by law

to make deposits in trust with the state treasurer one twentieth of one per cent of the average of such deposits by it for the year last preceding such assessment. Such assessment shall be collected in the same manner as taxes upon corporations.

Historical and Statutory Notes

St.1891, c. 233.
St.1901, c. 281.
R.L.1902, c. 6, § 6.

§ 28A. Withholding taxes; internal revenue code of United States

The state treasurer and other officials having charge of the payment of salaries and wages by the commonwealth and its political subdivisions, respectively, to officers and employees thereof are hereby authorized, empowered and directed to withhold such amount of the salaries or wages of each such officer or employee as may be required by the provisions of the internal revenue code of the United States, as from time to time amended, and to transmit and pay the amount so withheld to the government of the United States in accordance with said provisions.

Added by St.1947, c. 483, § 1.

§ 28B. Withholding statements; federal taxes

The state treasurer and other officials having charge of the payment of salaries and wages by the commonwealth and its political subdivisions, respectively, to officers and employees thereof are hereby authorized, empowered and directed to furnish to each such officer or employee in respect of his employment during any calendar year, on or before January thirty-first of the succeeding year, a written statement showing the name and address of, and the salary or wages paid to, such officer or employee during such calendar year, and the amount of the federal tax deducted and withheld under the internal revenue code, as from time to time amended, in respect of such salary or wages, and a copy thereof to the commissioner of internal revenue, or his successor, and to the commissioner of revenue.

Added by St.1947, c. 483, § 1. Amended by St.1978, c. 514, § 61.

§ 28C. Reciprocal enforcement of tax liabilities

At the request of the commissioner, the attorney general may bring suit, in the name of the commonwealth, in the appropriate court of any other state to collect any tax legally due the commonwealth; and any political subdivision of the commonwealth or the appropriate officer thereof, acting in its behalf, may bring suit in the appropriate court of any other state to collect any tax legally due to such political subdivision.

The courts shall recognize and enforce liabilities for taxes similar to the taxes imposed by the commonwealth and lawfully imposed by any other state, or political subdivision thereof, which extends a like comity to the commonwealth, and the duly authorized officer of any other state, or political subdivision thereof, may sue for the collection of such taxes in the courts of the commonwealth. A certificate by the secretary of state of such other state that the officer suing for the collection of such a tax is duly authorized to collect the same shall be conclusive proof of such authority. A certificate by the commissioner of revenue that the tax of such other state or political subdivision thereof is similar to a tax imposed by the commonwealth shall be prima facie evidence of such similarity.

For the purposes of this section, the words "tax" and "taxes" shall include interest and penalties due under any taxing statute, and liability for such interest or penalties, or both, due under a taxing statute of another state, or political subdivision thereof, shall be recognized and enforced by the courts of the commonwealth to the same extent that the laws of such other state permit the enforcement in its courts of liability for such interest or penalties, or both, due under the tax laws of the commonwealth, or any political subdivision thereof.

Added by St.1964, c. 500. Amended by St.1978, c. 514, §§ 62, 63.

§ 29. Repealed, 1989, 397, Sec. 1

§ 30. Repealed, 1976, 415, Sec. 99

Historical and Statutory Notes

See, now, c. 62C, § 69.

§ 31. Forms; authority of commissioner

In addition to the forms expressly required by any other provision of law to be as prescribed or approved by the commissioner, such other forms as may be deemed by him to be necessary or convenient for use under any provision of chapters fifty-nine to sixty-five C, inclusive, shall be as prescribed or approved by him; provided, that variance from a form so prescribed or approved shall not affect the validity of the form so used, if the form used is in substantial conformity to that so prescribed or approved, and the commissioner shall, upon writ-

ten request, approve said form for the particular use intended. In any case where the commissioner, under authority hereinbefore granted to him, shall prescribe or approve only a portion of a form as being necessary or convenient for use, the provisions of this section relative to forms shall apply to such portion of a form.

Added by St.1937, c. 135, § 1. Amended by St.1953, c. 654, § 21; St.1975, c. 684, § 36; St.1978, c. 514, § 66.

§§ 31A to 51. Repealed, 1976, 415, Sec. 99

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CHAPTER 58A

APPELLATE TAX BOARD

St.1937, c. 400, § 2, amended the title of Chapter 58A, which prior thereto read, "Board of Tax Appeals".

Section

1. Appellate tax board; establishment; appointment; terms; compensation; removal; performance evaluations.
1A. Quorum; decisions by a single member of board.
2. Principal office; meetings; hearings.
3. Reports and opinions; publication; sale.
4. Annual reports.
5. Traveling expenses.
5A. Appointment of employees; expenditures.
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8. Hearings.
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11. Oaths; witnesses; depositions.
12. Costs; witness fees; service of process.
12A. Costs; appeal.
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12C. Appeals; reports of assessment ratios; admissibility in evidence; abatement.
12D. Electric or gas company property; abatement or reclassification; appeals.
13. Findings; decisions; opinions; reports; appeals; costs.
14. Disproportionate assessments; measure of damages.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Appellate tax board; establishment; appointment; terms; compensation; removal; performance evaluations

There shall be in the executive office of administration and finance, but not subject to its control in the conduct of its adjudicatory functions, an appellate tax board, in this chapter referred to as the board, consisting of five members, appointed by the governor, with the advice and consent of the council, who shall be appointed for six year terms from March first in the year of appointment. The governor, with the advice and consent of the council, shall designate one of the members as chairman of said board, in this chapter referred to as the chairman. Upon the expiration of the term of office of a member, his successor shall be appointed in the manner aforesaid for a term of six years. The chairman shall receive as compensation 75 per cent of the salary received by the chief administrative justice of the trial court, and each other member of the board shall receive as compensation 75 per cent of the salary received by an associate justice of the trial court, as provided in section 4 of chapter 211B.

Members shall devote their full time during business hours to the duties of their offices. All members of the board shall devote their time during office hours to the work of the board. No member of the board, while a member, shall act as attorney, counselor or accountant in any contested matter before the department of revenue, before any board of assessors, before the courts of the commonwealth or the federal courts. Not more than three members of the board shall be members of the same political party.

A member may be removed by the council, upon request of the governor and upon notice and hearing, for neglect of duty, inability to perform duties, malfeasance in office, or for other good cause.

Members shall be subject to an annual written performance evaluation to be completed by the chairman. In addition to the standard criteria applicable to the evaluation of equivalent grade managers employed by the commonwealth, members shall also be evaluated upon: efficiency and fairness in the conduct of hearings; promptness in issuing decisions in single member and small claims cases; the ability to coordinate, oversee, draft and otherwise contribute to the expeditious issuance of written findings of fact and reports with the assistance of the legal department in cases assigned to the member; the total number of proceedings of comparable matters handled and orders and decisions issued in those matters; contributions to the management and reduction of the board's caseload; any written complaints or commendations received and verified; compliance with this chapter and other applicable chapters of the General Laws; and other information that may be relevant. The chairman shall take into consider-

ation the complexity of cases in making his evaluation. Such performance evaluation may be used as evidence of a member's inability to perform his duties.

The chairman shall be subject to an annual written performance evaluation to be completed by the governor's chief legal counsel that includes evaluation of the management of the board's caseload, the ability to manage effectively the daily operations of the board and the personnel of the board, and the evaluation criteria applicable to members of the board, as appropriate. Such performance evaluation may be used by the governor as evidence of a chairman's inability to perform his duties.

The chairman, with the advice and consent of the governor's council, shall be authorized, subject to appropriation, to hire additional members on a full-time, temporary basis to hear such cases as may be heard by a single member as outlined in section 1A. For purposes of this section, temporary basis shall mean for a one year period and such period may be extended for an additional year by the chairman, if necessary. Any member of the board, hired on a temporary basis, shall devote his full time during business hours to the duties of the office. A temporary member of the board shall devote his whole time during office hours to the work of the board, and shall not act as attorney, counsellor or accountant in any contested matter before the department of revenue, before any board of assessors, before the courts of the commonwealth, or before the federal courts. Said member shall receive 90 per cent of the annual compensation of appointed members as outlined in section 1.

A vacancy in the board shall not impair its powers nor affect its duties. The board shall have a seal that shall be judicially noticed.

Amended by St.1937, c. 400, § 3; St.1948, c. 583; St.1950, c. 784; St.1953, c. 654, § 23; St.1955, c. 730, § 41; St.1957, c. 732; St.1963, c. 801, § 74; St.1969, c. 766, § 44; St.1971, c. 116, § 42; St.1972, c. 300, § 40; St.1973, c. 426, § 43; St.1973, c. 1193, § 2; St.1974, c. 422, § 48; St.1977, c. 234, §§ 127 to 129; St.1977, c. 872, §§ 124 to 126; St.1977, c. 987; St.1978, c. 514, §§ 67, 68; St.1978, c. 580, § 9; St.1979, c. 527, § 1; St.1981, c. 699, § 80; St.1994, c. 60, § 74; St.1998, c. 485, § 2.

Historical and Statutory Notes

St.1930, c. 416, § 1.

§ 1A. Quorum; decisions by a single member of board

The majority of the members of the board shall constitute a quorum for the transaction of its business. For purposes of this section, temporary members shall not be counted for purposes of a quorum, and shall not vote on board matters other than upon specific cases to which they are assigned by the chairman. A single member of the board may decide the following types of cases:

(i) cases on appeal from a board of assessors where the assessed value of the property involved does not exceed $500,000;

(ii) cases on appeal from a board of assessors where the assessed value exceeds $500,000 but does not exceed $750,000 when the appellant and appellee gives written consent to a decision by a single member;

(iii) cases heard under the informal procedure in which the assessed value is less than $1,000,000 as provided in section 7A or the small claims procedure as provided in section 7B.

In any such appeal, upon request and upon the filing of such written consent the appeal shall be advanced for speedy hearing.

Such decision shall be signed by the single member of the board who presided at the hearing, and such case shall be attributed to said single member for tracking and evaluation purposes.

Added by St.1998, c. 485, § 2.

§ 2. Principal office; meetings; hearings

The principal office of the board shall be in Boston but said board may sit at any place within the commonwealth. The time and place of its meetings shall be prescribed by the chairman, and the chairman shall assign all members for the hearings held outside of Boston on a rotating basis, taking into consideration the expertise, qualifications, travel involved and needs of the entire board when determining the rotation. The county commissioners shall provide the board with suitable rooms in courthouses or other buildings when necessary for hearings outside the city of Boston. Adequate offices and a hearing room in the state house or elsewhere in said city shall be provided for the board.

Amended by St.1998, c. 485, § 2.

Historical and Statutory Notes

St.1930, c. 416, § 1.

§ 3. Reports and opinions; publication; sale

The board shall provide for the publication and sale or distribution of such of its reports and opinions as are of public interest, in such form and

manner as it may deem best adapted for public convenience and use, upon such terms and conditions as may be approved by the governor and council.

Amended by St.1998, c. 485, § 2.

Historical and Statutory Notes

St.1930, c. 416, § 1.

§ 4. Annual reports

The board shall report annually to the general court such suggestions and recommendations for the amendment, alteration and modification of existing laws relative to taxation and related matters, as it may deem desirable, and shall include in such report a statement of the number and type of matters handled by it during the preceding state fiscal year and the number of matters pending at the end of the year. Such report shall further provide the aggregate number and type of cases assigned to each member, the manner by which the case was disposed of and the average length of time for issuing a decision from the date of the close of the record.

Amended by St.1998, c. 485, § 2.

Historical and Statutory Notes

St.1930, c. 416, § 1.

§ 5. Traveling expenses

The members and employees of the board shall receive their necessary and reasonable traveling expenses and such other expenses, including subsistence actually incurred while traveling outside the city of Boston in the performance of their duties.

For purposes of this section, overnight accommodations for travel within a 50 mile radius of Boston shall not be considered reasonable.

Amended by St.1941, c. 381; St.1941, c. 596, § 24; St.1998, c. 485, § 2.

Historical and Statutory Notes

St.1930, c. 416, § 1.

§ 5A. Appointment of employees; expenditures

Subject to appropriation, the chairman shall appoint five attorneys and may appoint such other employees, including clerks, and make such other expenditures including computer training, as he deems necessary in order to execute efficiently the functions vested in said board.

Any clerk or assistant clerk employed by the board as of July 1, 1996 shall hold office during good behavior, subject, however, to retirement under the provisions of any applicable general or special law relative to retirement systems. A clerk or assistant clerk may be removed by the chairman, upon notice and hearing, for neglect of duty, inability to perform duties, or malfeasance in office, but for no other cause. All clerks or assistant clerks hired after July 1, 1996 shall be deemed employees at will.

All expenditures of the board shall be allowed and paid out of moneys appropriated for the purpose of the board, upon presentation of itemized vouchers therefor, signed by the chairman or a person designated by the board for the purpose.

Added by St.1998, c. 485, § 2.

§ 6. Jurisdiction

The board shall have jurisdiction to decide appeals under the provisions of: section 42E of chapter 40; sections 2 and 14 of chapter 58; clauses Seventeenth and Twenty-second of section 5 of chapter 59; sections 7, 7A, 39, 64, 65, 65B, 73 and 81 of said chapter 59; section 2 of chapter 60A; section 14 of chapter 61B; sections 39, 67 and 68 of chapter 62C; section 2 of chapter 63; section 26 of chapter 65; section 4 of chapter 65A; any other provision of law wherein such jurisdiction is or may be expressly conferred.

Except as otherwise provided by law, no appeal to the board shall stay the collection of any tax or excise.

Whenever a board of assessors, before whom an application in writing for the abatement of a tax is pending, fails to act upon said application, except with the written consent of the applicant, prior to the expiration of three months from the date of filing of such application, it shall then be deemed to be denied, and the taxpayer shall have the right, at any time within three months thereafter, to take any appeal from such denial to which he may be entitled by law, in the same manner as though the board of assessors had in fact refused to grant the abatement applied for. After the expiration of said three months from the date of filing such application, the board of assessors shall have no further authority to act upon said application; provided, however, that during the period allowed for the taking of an appeal, including instances where the application for abatement has been denied, the assessors may, by agreement with the applicant, abate the tax in whole or in part in final settlement of said application, and shall also have the authori-

ty granted to them by section 7 to abate, in whole or in part, any tax as to which an appeal has been seasonably taken.

Whenever the commissioner of revenue, before whom an application in writing for the abatement of tax is or shall be pending, fails to act upon said application prior to the expiration of six months from the date of filing of the same, it shall then be deemed to be denied unless the applicant shall have filed with the commissioner, prior to such expiration, his written consent to the failure of the commissioner to act on said application within said six months' period. Said consent may be withdrawn by the applicant at any time, in which event said application, unless previously acted on by the commissioner, shall be deemed to be denied at the expiration of said six months' period or on the date of such withdrawal, whichever is later. The applicant, at any time within six months from the date on which any such application shall be so deemed to be denied by the commissioner, shall have the right to take any appeal from such denial to which he may be entitled by law in the same manner as though the commissioner had in fact refused to grant the abatement applied for. The commissioner shall have authority to act on any application after the date of any denial if the applicant has not seasonably taken an appeal from such denial. During the period allowed for the taking of an appeal, the commissioner may, by agreement with the applicant, abate the tax in whole or in part in final settlement of said application subject to the provisions of section 37A or 37C of chapter 62C. Amended by St.1932, c. 180, § 10; St.1933, c. 167, § 4; St.1934, c. 323, § 10; St.1938, c. 478, § 4; St.1941, c. 609, § 2; St.1941, c. 726, § 1; St.1945, c. 367, § 3; St.1945, c. 621, § 1; St.1947, c. 632, § 2; St.1951, c. 641, § 9; St.1953, c. 654, § 24; St.1957, c. 617, § 12A; St.1958, c. 523, § 1; St.1969, c. 556, § 2; St.1975, c. 684, § 37; St.1976, c. 415, § 2; St.1978, c. 514, § 69; St.1978, c. 580, § 10; St.1979, c. 713, § 2; St.1979, c. 797, § 9A; St.1998, c. 485, § 2.

Historical and Statutory Notes

St.1930, c. 416, § 1.

§ 7. Appeals; petition; answers; fees; abatement

Any party taking an appeal to the board, hereinafter called the appellant, from a decision or determination of the commissioner or of a board of assessors, hereinafter referred to as the appellee, shall file a petition with the clerk of the appellate tax board and serve upon said appellee a copy thereof in the manner provided in section 9. No petition shall relate to an assessment on more than one parcel of real estate, except where the board shall specifically permit otherwise. Upon such appeal, the petition shall set forth specifically the facts upon which the party taking an appeal, hereinafter called the appellant, relies, together with a statement of the contentions of law which the appellant desires to raise. The appellant shall state upon the petition the address at which service of any pleading, motion, order, notice or process in connection with the appeal can be made upon him. Within such time as the board by its rules may prescribe, the appellee shall file with the board an answer denying or admitting each and every allegation of fact contained in the petition; except that, in an appeal under section 64 or 65 of chapter 59, if the appellee desires to raise no issue other than the question whether there has been an overvaluation or improper classification of the property on which the tax appealed from was assessed, no answer need be filed. If no answer is filed in such a case, the allegation of overvaluation or improper classification of such property shall be held to be denied and all other material facts alleged in the petition admitted. If an answer is filed, a copy shall be served upon the appellant, in the manner provided in section 9. The party taking the appeal shall at the time of filing the petition pay to the clerk an entry fee for each appeal from a decision of the commissioner, or, in the case of an appeal from a decision of a board of assessors, an entry fee where the assessed fair cash valuation of the real property, or personal property, or both, the tax on which is sought to be abated, is $50,000 or less; or an entry fee where such assessed fair cash valuation is in excess of $50,000. The commissioner of administration shall annually determine the amounts of such entry fees under the provisions of section 3B of chapter 7. Except as provided in section 12C of this chapter, the board shall not consider, unless equity and good conscience so require, any issue of fact or contention of law not specifically set out in the petition upon appeal or raised in the answer. At any time before the decision upon the appeal by the board or by the appeals court under section 13, the appellee may abate the tax appealed from, in whole or in part, or change its determination subject to the provisions of section 37A or 37C of chapter 62C.

If any petition, including any petition, statement or appeal filed under this section or section 7A or 7B, is, after the period allowed for filing appeals with the board, delivered by United States mail, or

by such alternative private delivery service as the board may by rule permit, to the board, the date of the United States postmark, or other substantiating mark permitted by rule of the board, affixed on the envelope or other appropriate wrapper in which such petition is mailed or delivered shall be deemed to be the date of delivery, if such petition was mailed in the United States in an envelope or other appropriate wrapper, first class postage prepaid, or delivered to such alternative private delivery service, properly addressed to the board. As used in this section, "United States postmark" shall mean only a postmark made by the United States post office.

In the case of an appeal relating to property classified as either residential greater than eight units, or commercial or industrial, and which is assessed for more than $200,000 in the previous fiscal year, upon the written request of the appellee, the appellant shall file with the board an income and expense statement for the most recent year preceding the valuation date at issue in the appeal, completed under oath, within 40 days of such request.

Amended by St.1933, c. 321, § 2; St.1939, c. 451, § 18; St.1945, c. 621, § 2; St.1952, c. 502; St.1953, c. 654, § 25; St.1972, c. 684, § 2; St.1978, c. 514, § 70; St.1978, c. 580, § 11; St.1979, c. 383, § 2; St.1980, c. 572, § 12; St.1986, c. 385, § 2; St.1989, c. 341, § 33; St.1998, c. 485, § 2; St.2000, c. 324, § 1.

Historical and Statutory Notes

St.1930, c. 416, § 1.

§ 7A. Informal procedure

The board shall establish by rule an alternative procedure, hereinafter referred to as the informal procedure, for the determination of petitions for abatement of any tax upon real estate or tangible personal property, where such procedure is elected by both parties, except as hereinafter provided. Such procedure, to the extent that the board may consider practicable, shall eliminate formal rules of pleading, practice and evidence, and, except for the entry fee herein provided, may eliminate any or all fees and costs, or may provide that costs shall be in the discretion of the board.

An appellant desiring to be heard under the informal procedure shall pay to the clerk the entry fee provided in section 7, except as otherwise herein provided, and shall file: a written waiver of the right to appeal to the appeals court or the supreme judicial court, except upon questions of law raised by the pleadings or by an agreed statement of facts or shown by the report of the board; an election of the informal procedure; a written statement of the facts in the case; and the amount claimed in abatement, together with such additional information as the clerk may require, hereinafter collectively referred to as the pleadings. The minimum entry fee shall be determined annually by the commissioner of administration under the provision of section 3B of chapter 7 if the assessed fair cash valuation of the property on which the tax appealed from was assessed does not exceed $20,000 and such property is occupied in whole or in part by the appellant as his dwelling, contains no more than three units designed for dwelling purposes and is in no part used for any other purposes, or if the assessed valuation of the property on which the tax appealed from was assessed does not exceed $5,000 and such property is within the class of tangible personal property described in clause Twentieth of section 5 of chapter 59.

The pleadings may be made on forms to be supplied by the board and, if the appellant so requests and the assessed fair cash valuation of the property concerned does not exceed $20,000, shall be made out for the appellant by the clerk or an employee of the board designated by the board. The clerk shall then serve a copy of such pleadings upon the appellee. No further pleadings shall be required under this procedure if the appellee intends to offer no other defense than that the property was not overvalued or that the property was not improperly classified; otherwise, it shall file with the board within 30 days of the service of such pleadings an answer similar to that required under the procedure provided by section 7, hereinafter referred to as the formal procedure.

If the assessed fair cash valuation of the property concerned exceeds $20,000, the appellee, within 30 days of the date of service of such pleadings, may elect to have the appeal heard under the formal procedure by so notifying the clerk in writing and by paying him a transfer fee to be determined annually by the commissioner of administration under the provision of section 3B of chapter 7, in which case the said statement shall be considered to be a petition and such service to be service of the petition and the waiver of the right of appeal by the appellant shall be void. If the appellee does not so transfer the case, the informal procedure shall be deemed to have been accepted and all right of appeal waived by the appellee, except upon questions of law raised by the pleadings or by an

agreed statement of facts or shown by the report of the board.

No statement under the informal procedure shall relate to an assessment on more than one parcel of real estate, except where the board shall specifically permit otherwise. The chairman shall provide for the speedy hearing of all appeals to be heard under the informal procedure. The chairman shall make every effort to reduce the expense of hearing cases filed under the informal procedure by directing whenever possible that petitions for abatement of taxes assessed upon real estate situated in the same general locality of the same town be heard together, irrespective of the identity of the appellants.

Added by St.1933, c. 321, § 3. Amended by St.1935, c. 447; St.1938, c. 384; St.1943, c. 282; St.1945, c. 621, § 3; St.1972, c. 684, § 3; St.1978, c. 580, § 12; St.1980, c. 572, §§ 13, 14; St.1989, c. 341, §§ 34, 35; St.1989, c. 496; St.1998, c. 485, § 2.

§ 7B. Small claims procedure

(a) The board shall establish by rule a further alternative procedure, hereinafter referred to as the small claims procedure, for the determination of petitions for abatement of any tax or excise to which the provisions of chapter 62C apply, as they are or may be specified in section 2 of said chapter 62C. The appellant may elect the small-claims procedure in any case in which the amount of tax placed in dispute by the petition, does not exceed (1) $5,000 for any taxable year, in the case of a tax imposed by taxable year; (2) $5,000 for any calendar year, in the case of a tax imposed by calendar year; (3) $5,000 for any calendar year, in the case of a tax imposed by chapters 64A to 64J, inclusive, and section 21 of chapter 138; (4) $5,000 in the case of a tax imposed by chapter 65C; or (5) $5,000 for any taxable event or transaction in the case of any other tax. For purposes of this section, the amount of any tax or excise placed in dispute does not include any interest, penalty, or addition to tax imposed by chapter 62C or any statute referred to in section 2 of said chapter. If, however, only the assessment or the amount of interest and/or penalties is in dispute, said interest and penalties shall not exceed $5,000.

(b) Proceedings under the small-claims procedure shall be conducted as informally as possible in accordance with such rules of evidence, practice, and procedure as the board may prescribe. To the extent that the board may consider practicable, the small-claims procedure shall eliminate formal rules of pleading, practice, and evidence, and except for the entry fee herein provided, may eliminate any or all fees and costs, or may provide that costs shall be in the discretion of the board. The chairman shall provide for the speedy hearing of all appeals to be heard under the small-claims procedure.

(c) An appellant desiring to be heard under the small-claims procedure shall pay to the clerk a minimum entry fee as determined annually by the commissioner of administration under the provision of section 3B of chapter 7 and shall file an election of the small-claims procedure and a written statement of the facts of the case and of the amount claimed in abatement, together with such additional information as the clerk may require. The statement may be made on forms to be supplied by the board. The clerk shall then serve a copy of the statement upon the commissioner of revenue. The appellant shall also file a written waiver of the right to appeal to any court. Within 30 days of the service of the statement or at such other time as the board may order, the commissioner of revenue shall file with the board an answer similar to that required under the formal procedure provided by section 7.

(d) Any case in which the appellant has filed an appeal under the small-claims procedure, as provided in subsection (c) above, shall be designated and docketed as a small-claims case. With the concurrence of the board, the proceedings therein shall be conducted as a small-claims case in accordance with this section.

(e) At any time before the commencement of the hearing, the board on its own motion or on the motion of a party to the appeal may order that the small-claims designation be removed and that the proceedings be transferred to the formal procedure under section 7. In addition, at any time before a decision is entered, the board shall discontinue further proceedings under this section if it finds (1) that there are reasonable grounds for believing that the amount of tax placed in dispute exceeds the applicable jurisdictional amount as described in subsection (a), and (2) that the amount of the excess is large enough to justify granting the request. The commissioner, by motion, may also request a matter be removed from the small claims procedure if: (1) there is a recurring issue of law; and (2) the aggregate tax at issue, taking into account similarly situated taxpayers, is over $200,000. Upon any such removal or discontinuance, proceedings in the case shall be transferred to the formal docket and conducted under the

formal procedure provided by section 7, in which case the statement required by subsection (c) shall be considered to be a petition, its service to be service of a petition, and the waiver of the right of appeal to be void. If the small-claims designation is not removed and proceedings under this section are not discontinued, the small-claims procedure shall be deemed to have been accepted and all right of appeal waived by both parties.

(f) The board shall make a decision in each case heard by it under the small-claims procedure, giving a brief written summary of the reasons therefor. No decision shall grant an abatement of tax exceeding the amount of tax placed in dispute within the limits prescribed in subsection (a). Where the amount of tax which the commissioner has refused to abate exceeds the limits imposed by subsection (a), the appellant may nevertheless elect the small-claims procedure; provided, however, that such election shall, unless the small-claims procedure is discontinued pursuant to subsection (e), foreclose all rights to an abatement of any amount of tax in excess of such limits and all interest, penalties, or additions to tax imposed by chapter 62C related to such excess.

(g) A decision entered in any case in which the proceedings are conducted under this section shall not be reviewed in any court and shall not be treated as precedent for any other case.

Added by St.1998, c. 485, § 2.

§ 8. Hearings

A hearing shall be granted if any party to an appeal so requests, and upon motion of any party to an appeal, or by direction of the board, any appeal may be set down for a hearing. Hearings may be held before less than a majority of the members of the board and the chairman may assign members to hold hearings. Hearings before the board, or any member thereof, shall be open to the public and such hearings and all proceedings shall be conducted in accordance with such rules of practice and procedure as the board may make and promulgate; provided, however, that such rules and amendments thereto shall comply with the filing provisions of section 5 of chapter 30A and such rules and amendments shall not take effect until so filed. The chairman may direct that two or more petitions for abatement of the taxes assessed upon real estate situated in the same general locality of the same town be heard together, irrespective of the identity of the appellants.

Amended by St.1933, c. 321, § 4; St.1989, c. 529, § 4; St.1998, c. 485, § 2.

Historical and Statutory Notes

St.1930, c. 416, § 1.

§ 8A. Discovery procedure

Before the hearing of a petition for the abatement of a tax upon real estate, machinery or other tangible property, the appellant shall permit the appellee personally or by attorneys, experts or other agents, to enter upon such real estate or upon any premises where such personal property is situated and examine and inspect such real estate or personal property, including any property which the appellant claims is exempt from taxation. In case of doubt or uncertainty as to the identity of the property, the appellant shall point out to the appellee the property to which the appeal relates. In the event the appellant refuses to permit the appellee to inspect said property, the board may dismiss the appeal. Sections 61 to 70, inclusive, of chapter 231 shall apply to all appeals before the board except those conducted under the informal procedure provided by section 7A or under the small claims procedure provided by section 7B of this chapter. At least 30 days prior to the hearing of a petition for the abatement of a tax, upon a motion filed by either party and granted by the board, or by direction of the board, the appellant and appellee shall exchange appraisal reports concerning the property.

In any pending appeal where jurisdiction is established, the board, with the consent of all parties, may in its discretion employ alternative dispute resolution techniques including, without limitation, mediation and arbitration. Said alternative dispute resolution techniques shall be conducted upon such terms and conditions as are established by the parties with the approval of the board.

Added by St.1935, c. 276, § 1. Amended by St.1986, c. 385, § 3; St.1998, c. 485, § 2.

§ 9. Service of process

The mailing by first class mail, postage prepaid, to the address of any appellant as given on the petition upon appeal, or to the address of his attorney or agent of record, if any, or to the usual place of business of the commissioner or of the board of assessors, or its agent or attorney of record, shall be deemed sufficient service of any pleading, mo-

tion, order, notice or process so served in respect to proceedings before the board. The board may order that further notice or notice by other means be given in any case.

Amended by St.1953, c. 654, § 26; St.1971, c. 871; St.1978, c. 514, § 71; St.1998, c. 485, § 2.

Historical and Statutory Notes

St.1930, c. 416, § 1.

§ 10. Recording of proceedings; electronic transcription; costs; waiver of appeal

At the request of any party made before any evidence is offered, or by direction of the board, the board shall order that all proceedings in a pending appeal be officially recorded. The board shall employ transcription methods including, without limitation, electronic transcription equipment, for the purpose of recording or reporting proceedings before the board. The board may contract for the reporting of such proceedings at the expense of the commonwealth in the first instance, but shall collect the cost thereof from the persons requesting that the proceedings be recorded. In such contract the board may provide that one or more copies of the transcript be supplied to the board without cost to the commonwealth, and may fix the terms and conditions upon which transcripts will be supplied to other persons and agencies by the official recorder. No proceedings shall be recorded or transcribed officially until an amount equal to the cost thereof, as estimated by the clerk, shall have been deposited with him at such times and in such manner as may be provided by the rules of the board. Any excess deposit over the actual cost shall be returned to the depositor by the clerk. If no party requests that the proceedings be reported, all parties shall be deemed to have waived all rights of appeal to appeals court or the supreme judicial court upon questions as to the admission or exclusion of evidence, or as to whether a finding was warranted by the evidence. The right of appeal upon questions of law raised by the pleadings or by an agreed statement of facts or shown by the report of the board shall not be deemed to be waived. For its own information only, the board may, subject to appropriation, have stenographic notes of hearings taken and may have transcripts thereof prepared in proceedings which are not officially reported at the request of a party.

Amended by St.1933, c. 321, § 5; St.1994, c. 60, § 75; St.1997, c. 43, § 61; St.1998, c. 485, § 2.

Historical and Statutory Notes

St.1930, c. 416, § 1.

§ 11. Oaths; witnesses; depositions

Any member of the board, or any employee of the board designated in writing for the purpose by the chairman, may administer oaths, and any member of the board may summon and examine witnesses and require, by subpoena signed by the member, the production of all returns, books, papers, documents, correspondence and other evidence, pertinent to the matter under inquiry, at any designated place of hearing, and may require the taking of a deposition before any person competent to administer oaths, either within or without the commonwealth. In the case of a deposition, the testimony shall be reduced to writing by the person taking the deposition or under his direction and shall then be subscribed by the deponent.

Either party may summon witnesses or may require the production of papers in the same manner in which witnesses may be summoned and papers may be required to be produced for the purpose of trials in the superior courts of the commonwealth. Any witness summoned or whose deposition is taken shall receive the same fees and mileage as witnesses in said courts.

Amended by St.1998, c. 485, § 2.

Historical and Statutory Notes

St.1930, c. 416, § 1.

§ 12. Costs; witness fees; service of process

Witness fees and expenses of service of process may be taxed as costs against the unsuccessful party to the appeal, in the discretion of the board. In the event that the commonwealth, or any official thereof, is the unsuccessful party to an appeal, the costs shall be paid from the state treasury upon certificate of a member of the board in such form as the board may prescribe by regulation. In the event that a subdivision of the commonwealth, or any official thereof, is the unsuccessful party to an appeal, the costs shall be paid from the treasury of such subdivision by the treasurer thereof upon the certificate of a member of the board in such form as the board may prescribe by regulation. In the event that costs are taxed against an unsuccessful taxpayer, a member of the board shall certify the amount of the same and the costs may be recovered in an action of contract by the state treasurer in the case of a tax assessed by the commissioner, or by the treasurer of the subdivision of the commonwealth in the case of a tax assessed by the subdivision.

Amended by St.1933, c. 321, § 6; St.1998, c. 485, § 2.

Historical and Statutory Notes

St.1930, c. 416, § 1.

§ 12A. Costs; appeal

If the owner of a parcel of real estate files an appeal of the assessed value of said parcel with the board for either of the next two fiscal years after a fiscal year for which the board has determined the fair cash value of said parcel and if the assessed value is greater than the fair cash value as determined by the board, the burden shall be upon the appellee to prove that the assessed value was warranted and upon failure of the appellee to do so, the board may, in its discretion, tax as costs against the appellee, in addition to witness fees and expenses of service of process, the whole or any part of the reasonable expense of the taxpayer incurred in the preparation, entry and trial of his appeal. Should the board find that the assessed value was warranted, then it may tax such costs of the appellee against the appellant. Such costs shall be certified and paid as provided in section 12.

Added by St.1943, c. 430. Amended by St.1978, c. 580, § 13; St.1998, c. 485, § 2.

§ 12B. Evidence of fair cash valuation or classification of property; admissibility

At any hearing relative to the assessed fair cash valuation or classification of property, evidence as to the fair cash valuation or classification of property at which assessors have assessed other property of a comparable nature or class shall be admissible.

Added by St.1950, c. 262. Amended by St.1978, c. 580, § 14; St.1998, c. 485, § 2.

§ 12C. Appeals; reports of assessment ratios; admissibility in evidence; abatement

In any appeal relative to the assessed valuation of property, the reports of the ratios which assessments in the city or town bear to the fair cash value of each class of property therein and the ratio which the total assessed value bears to the total fair cash value therein as determined by the commissioner's report made pursuant to sections 10 and 10C of chapter 58 shall be admitted into evidence by the appellate tax board on its own motion and shall be prima facie evidence of the assessment practices of the city or town and the ratios at which property is assessed for the year for which said determination is reported by the commissioner and for each following year until a new determination is reported by said commissioner under said section 10C.

The board may give an abatement, provided the evidence so warrants, on the basis of a disproportionate assessment even though that issue has not been raised by the pleadings.

Added by St.1979, c. 383, § 3. Amended by St.1998, c. 485, § 2.

§ 12D. Electric or gas company property; abatement or reclassification; appeals

Notwithstanding the provisions of any general or special law to the contrary, in any appeal under the provisions of sections 64 or 65 of chapter 59 from the refusal of the assessors to abate a tax or reclassify any real or personal property by an electric company or gas company, both as defined in section 1 of chapter 164, upon motion of any party after an appeal has been filed but before decision is rendered concerning real or personal property of an electric or gas company for any fiscal year certified or following certification for classification by the commissioner under the provisions of section 56 of chapter 40 or any determination of the commissioner made pursuant to section 1A of chapter 58, the board shall properly classify all the taxable property at issue as either real or personal and determine the fair cash value of such property, and the tax that should have been paid, notwithstanding the assessors' original classification of such property or the amount or form of the tax bill received and paid; provided, however, that upon a determination that any property should be reclassified, the taxpayer shall be allowed to file an appeal late concerning the valuation of such property, if an appeal has not been previously filed, within 30 days of such determination and order of the board.

In any determination made under this section, the board shall make subsidiary findings of the proper classification of all taxable property at issue, as either real or personal, the fair cash value and the total taxes that should have been paid for each parcel or item of such property, reduced by abatements, if any, for each fiscal year. Upon such determination, the board shall further find the taxes that were paid or owed for such property at issue as it was originally assessed and taxed, and shall then allocate and credit such taxes as part or all of the taxes that should have been paid for such property as properly classified by it, and such allocation shall be binding on the taxpayer and the assessor and shall be deemed to be the original tax

assessed and owed, subject only to any appeal taken pursuant to section 13; provided, however, that if the total amount of taxes that should have been paid under the board's de novo determination under this section is equal to or greater than the amounts actually paid or owed, as determined under this section, the appellant shall not be entitled to an abatement, notwithstanding the local assessor's original tax classification of the taxable property or the form of the original bill received and paid. Upon a determination under this section, the existing official records of the city or town shall be amended and corrected, and assessments and tax bills shall be deemed to have been issued in conformance with the board's determination.

Added by St.1985, c. 532. Amended by St.1998, c. 485, § 2.

§ 13. Findings; decisions; opinions; reports; appeals; costs

The board, or a single member of the board acting pursuant to the authority outlined in section 1A shall make a decision in each appeal heard by it within three months from the close of the record including submission of briefs and may make findings of fact and report thereon in writing. In any appeal in which the hearing is officially recorded pursuant to section 10, or in any appeal from the commissioner of revenue other than cases heard under the small claims procedure pursuant to section 7B, the member may take an additional three months to issue a decision. In every decision granting an abatement without findings of fact and report which relates to a tax on land with one or more buildings thereon, the board shall, if so requested by the appellee in writing at the commencement of the hearing, state separately the value of the land and of each building.

Except in cases heard under the informal procedure authorized by section 7A, or under the small-claims procedure authorized under 7B, the board shall make such findings and report thereon if so requested by either party within ten days of a decision without findings of fact and shall issue said findings within three months of the request, provided, however, the board, in its discretion, may extend the time for issuing said findings and report for an additional period not to exceed three months, upon written notice to both parties setting forth the reason for the extension. In extraordinary circumstances or with consent of all parties to the proceeding, the board may have whatever additional time is necessary for issuance of such findings of fact and report. Such report may, in the discretion of the board, contain an opinion in writing, in addition to the findings of fact and decision. If no party requests such findings and report, all parties shall be deemed to have waived all rights of appeal to the appeals court upon questions as to the admission or exclusion of evidence, or as to whether a finding was warranted by the evidence. All reports, findings and opinions of the board and all evidence received by the board, including a transcript of any official report of the proceedings, all pleadings, briefs and other documents filed by the parties, shall be open to the inspection of the public; except that the originals of books, documents, records, models, diagrams and other exhibits introduced in evidence before the board may be withdrawn from the custody of the board in such manner and upon such terms as the board may in its discretion prescribe. The decision of the board shall be final as to findings of fact. Failure to comply with the time limits, as outlined above, shall not affect the validity of the board's decision.

From any final decision of the board except with respect to decisions of the board under sections 25 and 26 of chapter 65, an appeal as to matters of law may be taken to the appeals court by either party to the proceedings before the board so long as that party has not waived such right of appeal. A claim of appeal shall be filed with the clerk of the board in accordance with the Massachusetts Rules of Appellate Procedure which rules shall govern such appeal. The court shall not consider any issue of law which does not appear to have been raised in the proceedings before the board.

If the order grants an abatement of a tax assessed by the commissioner and the tax has been paid, the amount abated with interest computed in accordance with section 40 of chapter 62C, and if costs are ordered against the commissioner, the amount thereof, shall be paid to the taxpayer by the state treasurer. If the order grants an abatement of a tax assessed by the board of assessors of a town and the tax has been paid, the amount abated with interest at the rate of 8 per cent per annum from the time when the tax was paid, and if costs are ordered against a board of assessors, the amount thereof, shall be paid to the taxpayer by the town treasurer, and, if unpaid, execution therefor may issue against the town as in actions at law. If costs are ordered against a taxpayer execution shall issue therefor. The appeal to the appeals court under this section shall be the exclusive method of reviewing any action of the board, except action

under sections 25 and 26 of chapter 65. For want of prosecution of an appeal in accordance with the provisions of this section the board, or, if the appeal has been entered in the appeals court, a justice of that court, may dismiss the appeal. Upon dismissal of an appeal, the decision of the board shall thereupon have full force and effect.

Amended by St.1933, c. 321, § 7; St.1933, c. 350, § 8; St.1935, c. 218, § 1; St.1939, c. 366, § 1; St.1953, c. 654, § 27; St.1954, c. 681, § 5; St.1956, c. 630; St.1957, c. 522; St.1965, c. 597, § 3A; St.1968, c. 120, §§ 2 to 4; St.1969, c. 692; St.1973, c. 1114, § 5; St.1976, c. 415, § 3; St.1978, c. 514, § 72; St.1978, c. 580, § 15; St.1979, c. 527, § 2; St.1983, c. 72, § 2; St.1985, c. 314, § 1; St.1998, c. 485, § 2.

Historical and Statutory Notes

St.1930, c. 416, § 1.
St.1931, c. 218, §§ 1, 2.

§ 14. Disproportionate assessments; measure of damages

In cases where the board finds that a taxpayer is being assessed disproportionately with respect to other properties within the same city or town, the board shall compute the measure of damages in the following manner:

(1) by computing an equalized tax rate by dividing the total taxes as assessed for that city or town for the year for which the finding was made by the fair cash value of the city or town, which shall in no event be higher than the equalized value as finally reported to the general court pursuant to section 10C of chapter 58 for that city or town in the year next preceding the year for which the finding was made.

(2) by applying the rate as computed in accordance with subsection 1 to the fair cash value of the property and thereby determine the taxes which should have been paid.

(3) by subtracting the amount of taxes which should have been paid from those actually paid or assessed.

In such cases within a city or town that has been certified for classification by the commissioner under the provisions of section 56 of chapter 40 and has implemented such classification system the measure of damages shall be computed on the basis of the tax rate of the class in which the property has been assessed or should have been assessed, as the case may be.

Added by St.1979, c. 797, § 10. Amended by St.1980, c. 261, §§ 8, 9; St.1998, c. 485, § 2.

CHAPTER 59

ASSESSMENT OF LOCAL TAXES

Section

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2C. Real estate sold by governmental or exempt entities; pro rata taxation; computation; collection remedies.
2D. Taxation of improved real estate based on value at issuance of occupancy permit; pro rata.
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3B. Real estate acquired by eminent domain; exceptions.
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4. Property taxable as personal estate.
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The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Repealed, 1963, 160, Sec. 7

§ 2. Property subject to taxation; exceptions

All property, real and personal, situated within the commonwealth, and all personal property of the inhabitants of the commonwealth wherever situated, unless expressly exempt, shall be subject to taxation; provided, however, that the personal property of a person having neither his domicile nor a place of business in this commonwealth, which, upon its being brought or shipped into this commonwealth, is forthwith stored in the original packages in a licensed public storage warehouse, shall, while so stored, be deemed to be in transit

and not subject to taxation under this chapter; but no portion of any warehouse which portion is owned or leased by a consignor or consignee of the personal property stored shall be deemed a licensed public storage warehouse.
Amended by St.1954, c. 459, § 1.

Historical and Statutory Notes

St.1780, c. 43.
St.1830, c. 151, § 2.
R.S.1836, c. 7, § 2.
G.S.1860, c. 11, § 2.
P.S.1882, c. 11, § 2.
R.L.1902, c. 12, § 2.
St.1909, c. 490, pt. 1, § 2.

§ 2A. Real property; mortgages; classifications

(a) Real property for the purpose of taxation shall include all land within the commonwealth and all buildings and other things thereon or affixed thereto, unless otherwise exempted from taxation under other provisions of law. The assessors of each city and town shall determine the fair cash valuation of such real property for the purpose of taxation on the first day of January of each year. Notwithstanding the foregoing, in any city or town which accepts the provisions of this sentence, buildings and other things erected on or affixed to land during the period beginning on January second and ending on June thirtieth of the fiscal year preceding that to which the tax relates shall be deemed part of such real property as of January first.

Mortgages upon buildings or other things, which with the land upon which they are erected or to which they are affixed are taxable as real estate defined herein, shall be deemed mortgages of real estate for the purpose of taxation, and shall be taxed under sections eleven to twelve B, inclusive.

(b) The assessors shall determine the fair cash valuation of such real property according to section thirty-eight; and if the city or town has been certified by the commissioner pursuant to subsection (c) shall classify such real property according to the following uses:—

"Class one, residential", property used or held for human habitation containing one or more dwelling units including rooming houses with facilities designed and used for living, sleeping, cooking and eating on a non-transient basis, including a bed and breakfast home with no more than three rooms for rent. Such property includes accessory land, buildings or improvements incidental to such habitation and used exclusively by the residents of the property or their guests. Such property shall include: (i) land that is situated in a residential zone and has been subdivided into residential lots; and (ii) land used for the purpose of a manufactured housing community, as defined in section thirty-two F of chapter one hundred and forty. Such property shall not include a hotel, or motel. Such property may be exempt from taxation under other provisions of law.

"Class two, open-space", land which is not otherwise classified and which is not taxable under the provisions of chapters sixty-one, sixty-one A or sixty-one B, or taxable under a permanent conservation restriction, and which land is not held for the production of income but is maintained in an open or natural condition and which contributes significantly to the benefit and enjoyment of the public. In a city or town that has elected to adopt section 2A of chapter 61, section 4A of chapter 61A or section 2A of chapter 61B, class two, open-space shall include land taxable under chapter 61, 61A or 61B.

"Class three, commercial", property used or held for use for business purposes and not specifically includible in another class, including but not limited to any commercial, business, retail, trade, service, recreational, agricultural, artistic, sporting, fraternal, governmental, educational, medical or religious enterprise, for non-profit purposes. Such property may be expressly exempt from taxation under other provisions of this chapter.

"Class four, industrial", property used or held for use for manufacturing, milling, converting, producing, processing or fabricating materials; the extraction or processing of materials unserviceable in their natural state to create commercial products or materials; the mechanical, chemical or electronic transformation of property into new products and any use that is incidental to or an integral part of such use, whether for profit or non-profit purposes; and property used or held for uses for the storage, transmitting and generating of utilities regulated by the department of public utilities or the department of telecommunications and cable. Such property may be exempt from taxation under other provisions of law.

Where real property is used or held for use for more than one purpose and such uses result in different classifications, the assessors shall allocate to each classification the percentage of the fair cash valuation of the property devoted to each use according to the guidelines promulgated by the commissioner.

Real property which is exempt from taxation under section five shall be classified according to said guidelines.

(c) Classification of real property shall not be implemented in any city or town until the commissioner has certified in writing to the assessors of such city or town that the assessments on the real property that they propose to make are at full and fair cash valuation as required by section thirty-eight and that a majority of its assessors are qualified to classify its property.

Added by St.1979, c. 797, § 11. Amended by St.1980, c. 261, §§ 10 to 12; St.1982, c. 369, §§ 3, 4; St.1982, c. 661; St.1989, c. 653, § 40; St.1991, c. 481, § 7; St.1996, c. 299; St.1997, c. 164, § 69; St.2006, c. 394, § 1, eff. Mar. 22, 2007; St.2008, c. 522, § 3, eff. April 15, 2009.

§ 2B. Certain types of interest or ownership taxable; liens; public purposes

Except as otherwise provided in section three E, real estate owned in fee or otherwise or held in trust for the benefit of the United States, the commonwealth, or a county, city or town, or any instrumentality thereof, if used in connection with a business conducted for profit or leased or occupied for other than public purposes, shall for the privilege of such use, lease or occupancy, be valued, classified, assessed and taxed annually as of January first to the user, lessee or occupant in the same manner and to the same extent as if such user, lessee or occupant were the owner thereof in fee, whether or not there is any agreement by such user, lessee or occupant to pay taxes assessed under this section; provided, however, that whenever under the constitution and laws of the United States the privilege of such use, lease or occupancy of real estate owned by the United States cannot be taxed as aforesaid, but a leasehold or other interest in such real estate or the ownership of or an interest in buildings and other things erected thereon or affixed thereto, may be taxed, such interest or ownership shall be valued, classified, assessed and taxed to the holder thereof to the extent permitted by such constitution and laws. Except as otherwise provided, a payment purporting to be in lieu of a local tax for a particular year on real estate subject to this section shall be applied in reduction of the tax assessed under this section for such year with respect to such real estate. Notwithstanding any contrary provision of section twelve C, unless there is a different agreement, no tax assessed under this section shall be retained out of rent or recovered under section twelve C.

No tax assessed under this section shall be a lien upon the real estate with respect to which it is assessed; nor shall any such tax be enforced by any sale or taking of such real estate; but the interest of any lessee therein may be sold or taken by the collector of the town in which the real estate lies for the nonpayment of such tax in the manner provided by law for the sale or taking of real estate for nonpayment of annual taxes. Such collector shall have for the collection of taxes assessed under this section all other remedies provided by chapter sixty for the collection of annual taxes upon real estate.

This section shall not apply to a use, lease or occupancy which is reasonably necessary to the public purpose of a public airport, port facility, Massachusetts Turnpike, transit authority or park, which is available to the use of the general public or to easements, grants, licenses or rights of way of public utility companies; to the property of the United States, or any instrumentality thereof, for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed, in behalf of the United States or any instrumentality thereof; or to the property of the United States, or any instrumentality thereof, which is used by a manufacturing corporation so classified under chapter fifty-eight.

Added by St.1979, c. 797, § 11. Amended by St.1980, c. 261, § 13.

§ 2C. Real estate sold by governmental or exempt entities; pro rata taxation; computation; collection remedies

Except as provided in section sixty-three A of chapter forty-four, whenever in any fiscal year the United States, the commonwealth, or a county, city or town, or any instrumentality thereof, or any entity whose real estate is exempt under clauses Third, Four, Four A, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth of section five, shall sell any real estate after January first in any year, the grantee of the real estate shall pay a pro rata amount or amounts, as hereinafter defined, to the city or town where such real estate is located in lieu of taxes that would have been due for the applicable fiscal year under this chapter if the real estate had been so owned on January first of the year of sale and, with respect to a sale between January first and June thirtieth, if the real estate had been so owned on January first of the year of sale and the preceding year. The pro rata

amounts payable to the city or town shall be determined as follows:

(a) A portion of a pro forma tax for the fiscal year in which such sale occurred allocable on a pro rata basis to the days remaining in such fiscal year from the date of sale to the end of the fiscal year; and

(b) A pro forma tax for the succeeding fiscal year where the sales take place between January first and June thirtieth of any year.

The pro forma tax shall be computed by applying the tax rate or the appropriate classified tax rate of the city or town for the fiscal year in which such sale occurs, to the sale price after crediting any exemption to which the grantee would have been entitled under this chapter if the real estate had been so owned on January first of the year of sale.

Such amounts shall be paid by the grantee to the collector of the city or town within thirty days of the date of the issuance by said city or town of a notification of such liability to said grantee or the date by which a tax assessed upon real estate would otherwise be payable without interest for the applicable fiscal year, whichever is later. Any amount not paid by said date shall bear interest from said date at the rate per annum provided in section fifty-seven. The collector shall have for the collection of sums assessed under this section all remedies provided by chapter sixty for the collection of taxes upon real estate.

Sums received under this section shall not be subject to section sixty-three of chapter forty-four, but shall be credited to the general fund of the city or town.

Added by St.1985, c. 25.

§ 2D. Taxation of improved real estate based on value at issuance of occupancy permit; pro rata

(a) Whenever in any fiscal year real estate improved in assessed value by over 50 per cent by new construction is issued a temporary or permanent occupancy permit after January 1 in any year, the owner of the real estate shall pay a pro rata amount or amounts, as herein defined, to the city or town where such real estate is located that would have been due for the applicable fiscal year under this chapter if the real estate had been so improved on the assessment date for the fiscal year in which the occupancy permit issued. The amounts payable to the city or town shall be determined as follows:

(1) A real estate tax based on the assessed value of the improvement for the fiscal year in which such improvement and issuance of an occupancy permit occurred allocable on a pro rata basis to the days remaining in the fiscal year from the date of the issue of the occupancy permit to the end of the fiscal year; and

(2) A real estate tax based on the assessed value of the improvement for the succeeding fiscal year where the occupancy takes place between January 1 and June 30 of any year.

(b) A real estate tax based on the assessed value of the improvement shall be computed by applying the tax rate or the appropriate classified tax rate of the city or town for the fiscal year in which such improvement and issuance of an occupancy permit occurs to the assessed value of the improvement as if the real estate had been so improved on January first of the year of occupancy.

(c) Such amounts shall be paid by the property owner to the collector of the city or town within 30 days of the date of issuance by said city or town of a notification of such liability to said property owner or the date by which a tax assessed upon real estate would otherwise be payable without interest for the applicable fiscal year, whichever is later. Any amount not paid by the said date shall bear interest from the said date at the rate per annum provided in section 57. The collector shall have for the collection of sums assessed under this section all remedies provided by chapter 60 for the collection of taxes upon real estate.

(d) A person upon whom a tax has been assessed pursuant to the provisions of this section shall have all remedies provided by section 59 and section 64 of chapter 59 and all other applicable provisions of the General Laws for the abatement and appeal of taxes upon real estate.

(e) Whenever in any fiscal year, the assessed value of real estate is decreased by over 50 per cent as the result of fire or natural disaster, the city or town shall abate or refund taxes received, as the case may be, in an amount to be calculated in the same manner as a real estate tax increase, based on the assessed value of an improvement, is calculated pursuant to the provisions of this section.

(f) The local appropriating authority, as defined in section 21C, may reject this section by written notification to the department of revenue.

Added by St.1998, c. 203. Amended by St.2003, c. 46, §§ 41, 42, eff. July 31, 2003.

§§ 3, 3A. Repealed, 1978, 580, Sec. 16

§ 3B. Real estate acquired by eminent domain; exceptions

All interests in real estate situated within the commonwealth heretofore or hereafter acquired by any corporation by eminent domain and all such interests in real estate heretofore or hereafter purchased by any corporation when it could have been acquired by eminent domain shall, unless expressly exempt by the charter of such corporation or by statute, be taxed to such corporation. This section shall not apply to real estate of the commonwealth or of any of its political subdivisions; nor shall it apply to real estate of a railroad corporation, which shall continue to be governed by section eighty-seven of chapter one hundred and sixty and any other provisions of law applicable thereto.

Added by St.1946, c. 393. Amended by St.1974, c. 155, § 1.

§ 3C. Pipe lines

Anything in this chapter to the contrary notwithstanding, every pipe line subject to valuation under section thirty-eight A shall be subject to taxation under this chapter as personal property, and shall be assessed to the owner thereof by the assessors in the respective cities and towns where such pipe line is located.

Added by St.1952, c. 614, § 1.

§ 3D. Repealed, 1974, 383, Sec. 2

§ 3E. Real estate owned by the United States and leased to private interests; enforcement by lien or sale; collection remedies

Whenever the Congress of the United States has so provided, a leasehold interest in real estate owned and leased by the United States and in buildings and other things erected thereon or affixed thereto shall be assessed and taxed to the lessee or his assigns to the extent so provided by the Congress. Payment of the aforesaid taxes shall not be enforced by any lien upon or sale of the said real estate but in the case of any leasehold subject to taxation as aforesaid the interest of the lessee or lessees or their assigns therein may be sold by the collector of taxes of the city or town in which the real estate is situated for the non-payment of the tax assessed as aforesaid in the manner provided by law for the sale of real estate for nonpayment of local taxes. Said collectors shall have for the collection of taxes assessed under this section all other remedies provided by chapter sixty for the collection of taxes by collectors of cities and towns.

Added by St.1975, c. 513, § 3.

§ 3F. Child care facilities; classification as property used for human habitation

For the purpose of this chapter and any other general or special law classifying real property for the purpose of taxation and in order to assist in the provision of child care, cities and towns shall classify that portion of any such property operated as a child care facility pursuant to section nine C of chapter forty A in the same category as property used or held for human habitation.

Added by St.1990, c. 521, § 5.

§ 4. Property taxable as personal estate

Except as provided in the following section and in chapters sixty-two and sixty-three, personal estate for the purpose of taxation shall include:

First, Goods, chattels, money and effects, wherever they are; ships and vessels and their equipment at home or abroad, except as provided in section eight of this chapter, in chapter sixty B and in section sixty-seven of chapter sixty-three.

Second, Money at interest, and other debts due the person to be taxed more than he is indebted or pays interest for; but not including in such debts due him or indebtedness from him any loan on mortgage of real estate, taxable as real estate, except the excess of such loan above the assessed value of the mortgaged real estate.

Third, Public stocks and securities, bonds of railroads and street railways and stocks in turnpikes, bridges and moneyed corporations within or without this commonwealth.

Amended by St.1978, c. 581, § 2.

Historical and Statutory Notes

St.1821, c. 107, § 2.
St.1830, c. 151, § 2.
R.S.1836, c. 7, § 4.
St.1839, c. 139, § 2.
G.S.1860, c. 11, § 4.
St.1881, c. 284, § 1.
St.1881, c. 304, § 6.

P.S.1882, c. 11, § 4.
St.1882, c. 76.
St.1888, c. 363.
R.L.1902, c. 12, § 4.
St.1902, c. 374, § 4.
St.1909, c. 440, § 2.
St.1909, c. 490, pt. 1, § 4.
St.1914, c. 198, § 2.

§ 5. Property; exemptions

The following property shall be exempt from taxation and the date of determination as to age, ownership or other qualifying factors required by any clause shall be July first of each year unless another meaning is clearly apparent from the context; provided, however, that any person who receives an exemption under the provisions of clause Seventeenth, Seventeenth C, Seventeenth D, Twenty-second, Twenty-second A, Twenty-second B, Twenty-second C, Twenty-second D, Twenty-second E, Thirty-seventh, Thirty-seventh A, Forty-first, Forty-first B, Forty-first C, Forty-second or Forty-third shall not receive an exemption on the same property under any other provision of this section, except clause Eighteenth or Forty-fifth.

First, Property owned by the United States so far as the taxation of such property is constitutionally prohibited, excepting property which the Congress of the United States has permitted to be subject to local taxation.

Second, Property of the commonwealth, except real estate of which the commonwealth is in possession under a mortgage for condition broken, lands in Boston known as the commonwealth flats, if leased for business purposes, lands and flats lying below high water mark in Provincetown harbor, belonging to the commonwealth and occupied by private persons by license of the department of environmental protection together with all wharves, piers and other structures which have been built thereon subsequent to the twenty-second day of May, nineteen hundred and twenty, and those which may hereafter be built on said lands and flats, in conformity with permits or licenses, buildings erected by lessees under section twenty-six of chapter seventy-five, structures erected on land in state forests, parks and reservations by persons occupying such land under authority conferred by the commissioner of environmental management, property taxable under chapter five hundred and seventy-five of the acts of nineteen hundred and twenty, and real estate taxable under section three A.

Third, Personal property of a charitable organization, which term, as used in this clause, shall mean (1) a literary, benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth, and (2) a trust for literary, benevolent, charitable, scientific or temperance purposes if it is established by a declaration of trust executed in the commonwealth or all its trustees are appointed by a court or courts in the commonwealth and if its principal literary, benevolent, charitable, scientific or temperance purposes are solely carried out within the commonwealth or its literary, benevolent, charitable, scientific or temperance purposes are principally and usually carried out within the commonwealth; and real estate owned by or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized or by another charitable organization or organizations or its or their officers for the purposes of such other charitable organization or organizations; and real estate purchased by a charitable organization with the purpose of removal thereto, until such removal, but not for more than two years after such purchase; provided, however, that:—

(a) If any of the income or profits of the business of the charitable organization is divided among the stockholders, the trustees or the members, or is used or appropriated for other than literary, benevolent, charitable, scientific or temperance purposes or if upon dissolution of such organization a distribution of the profits, income or assets may be made to any stockholder, trustee or member, its property shall not be exempt; and

(b) A corporation coming within the foregoing description of a charitable organization or trust established by a declaration of trust executed in the commonwealth and coming within said description of a charitable organization shall not be exempt for any year in which it omits to bring in to the assessors the list, statements and affidavit required by section twenty-nine and a true copy of the report for such year required by section eight F of chapter twelve to be filed with the division of public charities in the department of the attorney general, nor shall it be exempt for that athletic property or portion thereof for the part of the year which the assessors have determined to be utilized for other than literary, educational, benevolent, temperance, charitable, or scientific purposes in direct competition with a person engaged in the same activity and subject to the tax imposed by this chapter on properties so used. In the case of the

exemption of property from tax for a part of the year, the tax imposed shall bear the same proportion to the tax which would be applicable to such property if it were subject to tax for the entire year as the time such property is employed in such use bears to the total time during which such property is available for use during the year.

(c) Real or personal property of a charitable organization occupied or used wholly or partly as or for an insane asylum, insane hospital, or institution for the insane, or principally for the treatment of mental diseases or mental disorders, shall not be exempt unless at least one fourth of all property so occupied or used, wholly or partly, on the basis of valuation thereof, and one fourth of the income of all trust and other funds and property held for the benefit of such asylum, hospital or institution and not actually occupied or used by it for such purposes, is used and expended entirely for the treatment, board, lodging or other direct benefit of indigent insane persons, or indigent persons in need of treatment for mental diseases, as resident patients, without any charge therefor to such persons either directly or indirectly, except that a charitable organization conducting an insane asylum, insane hospital or institution for the insane to which persons adjudged insane by due process of law may be committed shall be exempt from taxation on personal property and buildings so occupied or used, but shall be subject to taxation on the fair cash value of the land owned by it and used for the purposes of such asylum, hospital or institution; and

(d) Real estate acquired after May fourth, nineteen hundred and eleven, by any association or private corporation formed or incorporated for the care of the insane, shall not be exempt under paragraph (c) unless the city council of the city, or the inhabitants of the town, in which it is situated, have by vote lawfully taken consented to the acquisition of such real estate, to be so exempt; nor shall real estate of a trust coming within the foregoing description of a charitable organization, if occupied or used wholly or partly as or for an insane asylum, insane hospital, or institution for the insane, or principally for the treatment of mental diseases or mental disorders, be exempt under paragraph (c) unless the city council of the city, or the inhabitants of the town, in which it is situated, have by vote lawfully taken consented to such exemption; and

(e) Real and personal property of an educational institution coming within the foregoing description of a charitable organization which is occupied or used wholly or principally as residences for officers of such institutions and which is not part of or contiguous to real estate which is the principal location of such institution shall not be exempt.

In any city or town which accepts the provisions of this paragraph, the provisions of subsection (c) shall not apply to any charitable non-residential mental health facility, organized under chapter one hundred and eighty which provides clinical, therapeutic, diagnostic and counseling services to persons with mental disorders. In any city or town that accepts this paragraph, any real estate owned by, or held in trust for, a charitable organization for the purpose of creating community housing, as defined in section 2 of chapter 44B, that was purchased from an entity that acquired the property pursuant to section 14 of chapter 244 shall be exempt until such real estate is leased, rented or otherwise disposed of, but not for more than 7 years after such purchase.

Fourth, That portion of the real estate and buildings of incorporated horticultural societies used for their offices, libraries and buildings.

Fourth A, Real and personal estate of incorporated agricultural societies; provided, that if the whole or any part of any such real estate is used for other than agricultural exhibition purposes and if the society derives any income from such use, such real estate, or part, as the case may be, shall not be exempt; and provided further, that if such society has not held an agricultural exhibition on such land for a period of three years or more, such real estate shall not be exempt.

Fifth, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of two hundred thousand dollars, if actually used and occupied by such association, and if the net income from said property is used for charitable purposes; but it shall not be exempt for any year in which such association or the trustees holding for the benefit of such association wilfully omit to bring in to the assessors the list and statement required by section twenty-nine.

Fifth A, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of four hundred thousand dollars, if actually used and occupied by such association, and if the net income

from said property is used for charitable purposes; but it shall not be exempt for any year in which such association or the trustees holding for the benefit of such association wilfully omit to bring into the assessors the list and statement required by section twenty-nine. This clause shall take effect upon its acceptance by any city or town. In those cities and towns which accept the provisions of this clause, the provisions of clause Fifth shall not be applicable; provided, however, that the state treasurer shall annually reimburse the city or town an amount equal to the reimbursement, if any, granted to such city or town under said clause Fifth for the most recent fiscal year in which it received such reimbursement.

Fifth B, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of seven hundred thousand dollars, if used and occupied by such association, and if the net income from said property is used for charitable purposes; provided, however, that such estate shall not be exempt for any year in which such association or the trustees holding for the benefit of such association wilfully omit to file with the assessors the list and statement required by section twenty-nine. This clause shall take effect upon its acceptance by any city or town. In a city or town which accepts the provisions of this clause, the provisions of clause Fifth and Fifth A shall not be applicable.

Fifth C, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of $1,500,000, if used and occupied by such association, and if the net income from the property is used for charitable purposes, but the estate shall not be exempt for any year in which the association, or the trustees holding for the benefit of the association, willfully fails to file with the assessors the list and statement required by section 29. This clause shall take effect upon its acceptance by any city or town. In a city or town which accepts this clause, clauses Fifth, Fifth A and Fifth B shall not be applicable.

Sixth, Real estate owned by or held in trust for a regiment, corps, company or other organized unit of the volunteer militia and used exclusively for military purposes, and tangible personal property owned by such an organized unit of the volunteer militia and used by it or its members exclusively for military purposes, for any year in which the trustee or a competent officer of the organization owning such property brings in to the assessors the list and statement required by section twenty-nine.

Seventh, Personal property of a fraternal society, order or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing life, sick, accident or other benefits for the members of such society, order or association, or their dependents.

Eighth, Personal property of any retirement association exempted by section nineteen of chapter thirty-two.

Ninth, Property of any annuity, pension or endowment association exempted by section forty-one of said chapter.

Tenth, Personal property owned by or held in trust within the commonwealth for religious organizations, whether or not incorporated, if the principal or income is used or appropriated for religious, benevolent or charitable purposes.

Eleventh, Notwithstanding the provisions of any other general or special law to the contrary, houses of religious worship owned by, or held in trust for the use of, any religious organization, and the pews and furniture and each parsonage so owned, or held in irrevocable trust, for the exclusive benefit of the religious organizations, and including the official residences occupied by district superintendents of the United Methodist Church and the Christian and Missionary Alliance and of the Church of the Nazarene, and by district executives of the Southern New England District of the Assemblies of God, Inc., Unitarian-Universalist Churches and the Baptist General Conference of New England, and the official residence occupied by the president of the New England Synod of the Lutheran Church in America, Inc., and the official residence occupied by a person who has been designated by the congregation of a Hebrew Synagogue or Temple as the rabbi thereof, but such exemption shall not, except as herein provided, extend to any portion of any such house of religious worship appropriated for purposes other than religious worship or instruction. The occasional or incidental use of such property by an organization exempt from taxation under the provisions of 26 USC Sec. 501(c)(3) of the Federal Internal Revenue Code shall not be deemed to be an appropriation for purposes other than religious worship or instruction.

Twelfth, Cemeteries, tombs and rights of burial, so long as dedicated to the burial of the dead, and buildings owned by religious nonprofit corporations and used exclusively in the administration of such cemeteries, tombs and rights of burial.

Thirteenth, Personal property held by cities, towns, religious societies and cemeteries, whether incorporated or unincorporated, or by the commonwealth or by any corporation, for the perpetual care of graves, cemetery lots and cemeteries, for the placing of flowers upon graves, for the care or renewal of gravestones, monuments or tombs, and for the care and maintenance of burial chapels; but this exemption shall not apply to any such personal property held by a cemetery corporation which distributes any of the income or profits of its business among its stockholders or members, nor shall such property be exempt for any year in which the holder thereof, other than the state treasurer, omits to bring in to the assessors the list and statement required by section twenty-nine.

Fourteenth, Any real or personal property of a water company whose charter exempts such property from taxation, but not of any other water company unless exempted by clause sixteenth.

Fifteenth, Property other than real estate owned by a credit union incorporated under chapter one hundred and seventy-one; also the capital stock thereof.

Sixteenth, (1) In the case of (a) a Massachusetts savings bank, (b) a Massachusetts co-operative bank, (c) a Massachusetts corporation subject to taxation under chapter sixty-three other than a corporation mentioned in either paragraph (2) or paragraph (3) of this clause, or (d) a foreign corporation subject to taxation under section twenty, twenty-three, fifty-two A or fifty-eight of said chapter sixty-three, all property owned by such bank or corporation other than the following:—real estate, poles, underground conduits, wires and pipes, and machinery used in manufacture or in supplying or distributing water; provided, that in the case of a foreign corporation subject to taxation under said section twenty or said section twenty-three, the laws of the state of incorporation, or, in the case of a foreign corporation of another nation, the laws of the state where it has elected to establish its principal office in the United States, grant similar exemption from taxation of tangible property owned by like corporations organized under or created by the laws of the commonwealth.

(1A) Underground wires, conduits and appurtenant equipment installed in accordance with the provisions of an ordinance or by-law adopted pursuant to the provisions of section twenty-two C or section twenty-two D of chapter one hundred and sixty-six to the extent of seventy-five per cent of the value thereof.

[Paragraph (2) of clause Sixteenth effective for tax years beginning on or after January 1, 2009. See 2008, 173, Sec. 101.]

(2) In the case of a business corporation subject to tax under section 39 of chapter 63 that is not a manufacturing corporation, all property owned by the corporation other than the following:— real estate, poles, underground conduits, wires and pipes, and machinery used in the conduct of the business, which term, as used in this clause, shall not be considered to include stock in trade or any personal property directly used in connection with dry cleaning or laundering processes or in the refrigeration of goods or in the air-conditioning of premises or in any purchasing, selling, accounting or administrative function.

[Paragraph (3) of clause Sixteenth effective for tax years beginning on or after January 1, 2011. See 2010, 240, Sec. 200.]

(3) In the case of (i) a manufacturing corporation or a research and development corporation, as defined in section 42B of chapter 63, or (ii) a limited liability company that; (a) has its usual place of business in the commonwealth; (b) is engaged in manufacturing in the commonwealth and whose sole member is a manufacturing corporation as defined in section 42B of chapter 63 or is engaged in research and development in the commonwealth and whose sole member is a research and development corporation as defined in said section 42B; and (c) is a disregarded entity, as defined in paragraph 2 of section 30 of chapter 63, all property owned by the corporation or the limited liability company other than real estate, poles and underground conduits, wires and pipes; provided, however, that no property, except property entitled to a pollution control abatement under clause forty-fourth or a cogeneration facility, shall be exempt from taxation if it is used in the manufacture or generation of electricity and it has not received a manufacturing classification effective on or before January 1, 1996. For the purposes of this section, a cogeneration facility shall be an electrical generating unit having power production capacity which, together with any other power

generation facilities located at the same site, is not greater than 30 megawatts and which produces electric energy and steam or other form of useful energy utilized for industrial, commercial, heating or cooling purposes. For purposes of this paragraph, in determining whether the sole member of a limited liability company treated as a disregarded entity is a manufacturing corporation or a research and development corporation, the attributes and activities of the limited liability company shall be taken into account by the member along with the member's other attributes and activities. This clause as it applies to a research and development corporation, as defined in section 42B of said chapter 63, and as it applies to a limited liability company that is a disregarded entity and whose sole member is a manufacturing corporation or a research and development corporation shall take effect only upon its acceptance by the city or town in which the real estate, poles and underground conduits, wires and pipes are located.

(4) Exemption under this clause shall not extend to a corporation subject to section 15.01 of subdivision A of Part 15 of chapter 156D, if the corporation has failed to deliver the certificate required by section 15.03 of said subdivision A of said Part 15 of said chapter 156D.

[Paragraph (5) of clause Sixteenth effective for tax years beginning on or after January 1, 2009. See 2008, 173, Sec. 101.]

(5) The classification by the commissioner or the appellate tax board of a corporation as a business corporation or a manufacturing corporation, as respectively defined as aforesaid, shall be followed in the assessment under this chapter of machinery used in the conduct of the business.

Seventeenth, Real estate, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, of a surviving spouse or of any minor whose parent is deceased, occupied by such spouse, or minor as her or his domicile, or a person or persons over the age of seventy who has owned and occupied it as a domicile for not less than ten years; provided, that the whole estate, real and personal, of such spouse, person or minor does not exceed in value the sum of twenty thousand dollars, exclusive of property otherwise exempt under clauses Twelfth, Twentieth and Twenty-first and exclusive of the value of the mortgage interest held by persons other than the person or persons to be exempted in such mortgaged real estate as may be included in such whole estate. No real estate shall be so exempt which the assessors shall adjudge has been conveyed to such spouse, person or minor to evade taxation. A spouse, person or minor aggrieved by any such judgment may appeal to the county commissioners or to the appellate tax board within the time and in such manner allowed by section sixty-four or sixty-five, as the case may be. Where the whole estate, real and personal, of such spouse, person or minor exceeds in value the sum of eight thousand dollars, exclusive of property otherwise exempt as aforesaid and exclusive of the value of the mortgage interest as aforesaid, this exemption shall be borne by the commonwealth, and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected. Any exemption under this clause, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due may be apportioned among the persons whose title to the real estate was acquired under the provisions of section three of chapter one hundred and ninety and who qualify for an exemption under this clause.

[There is no clause Seventeenth A or Seventeenth B.]

Seventeenth C, Real estate, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, of a surviving spouse or of any minor whose parent is deceased, occupied by such spouse, or minor as her or his domicile, or a person or persons over the age of seventy who has owned and occupied it as a domicile for not less than ten years; provided, that the whole estate, real and personal, of such spouse, person or minor does not exceed in value the sum of forty thousand dollars, exclusive of property otherwise exempt under clauses Twelfth, Twentieth and Twenty-first, exclusive of the value of the mortgage interest held by persons other than the person or persons to be exempted in such mortgaged real estate as may be included in such whole estate and exclusive of the first sixty thousand dollars in value of real estate occupied by such person as his domicile. No real estate shall be so exempt which the assessors shall adjudge has been conveyed to such spouse, person or minor to evade taxation. A spouse, person or minor aggrieved by any such judgment may appeal

to the county commissioners or to the appellate tax board within the time and in such manner allowed by section sixty-four or sixty-five, as the case may be. Any exemption under this clause, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due may be apportioned among the persons whose title to the real estate was acquired under the provisions of section three of chapter one hundred and ninety and who qualify for an exemption under this clause. This clause shall take effect upon its acceptance by any city or town. In those cities and towns which accept the provisions of this clause, the provisions of clause Seventeenth shall not be applicable; provided, however, that the state treasurer shall annually reimburse the city or town an amount equal to the reimbursement granted to such city or town under said clause Seventeenth for the most recent fiscal year in which it received such reimbursement.

Seventeenth C½. Real estate, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, of a surviving spouse or of any minor whose parent is deceased, occupied by such spouse, or minor as her or his domicile, or a person or persons over the age of seventy who has owned and occupied it as a domicile for not less than ten years; provided, however, that the whole estate, real and personal of such spouse, person or minor does not exceed in value the sum of forty thousand dollars, exclusive of property otherwise exempt under clauses Twelfth, Twentieth and Twenty-first, exclusive of the value of the mortgage interest held by persons other than the person or persons to be exempted in such mortgaged real estate as may be included in such whole estate and exclusive of the first one hundred and fifty thousand dollars in value of real estate occupied by such person as his domicile. No real estate shall be so exempt which the assessors shall adjudge has been conveyed to such spouse, person or minor to evade taxation. A spouse, person or minor aggrieved by any such judgment may appeal to the county commissioners or to the appellate tax board within the time and in such manner allowed by section sixty-four or sixty-five, as the case may be. Any exemption under this clause, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due may be apportioned among the persons whose title to the real estate was acquired under the provisions of section three of chapter one hundred and ninety and who qualify for an exemption under this clause. This clause shall take effect upon its acceptance by any city or town. In those cities and towns which accept the provisions of this clause, the provisions of clause Seventeenth shall not be applicable; provided, however, that the state treasurer shall annually reimburse the city or town an amount equal to the reimbursement granted to such city or town under said clause Seventeenth for the most recent fiscal year in which it received such reimbursement.

Seventeenth D, Real estate, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, of a surviving spouse or of any minor whose parent is deceased, occupied by such spouse, or minor as her or his domicile, or a person or persons over the age of seventy who has owned and occupied it as a domicile for not less than five years; provided, that the whole estate, real and personal, of such spouse, person or minor does not exceed in value the sum of forty thousand dollars provided that the real property occupied by such person as his or her domicile shall not be included in computing the whole estate, except for any portion of said real property which produces income and exceeds two dwelling units, exclusive of property otherwise exempt under clauses Twelfth, Twentieth and Twenty-first, exclusive of the value of the mortgage interest held by persons other than the person or persons to be exempted in such mortgaged real estate as may be included in such whole estate.

No real estate shall be so exempt which the assessors shall adjudge has been conveyed to such spouse, person or minor to evade taxation. A spouse, person or minor aggrieved by any such judgment may appeal to the county commissioners or to the appellate tax board within the time and in such manner allowed by section sixty-four or sixty-five, as the case may be. Any exemption under this clause, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due may be apportioned among the persons whose title to the real estate was acquired under the provisions of section three of chapter one hundred and ninety and who qualify for an exemption under this

clause. This clause shall take effect in any city or town upon its acceptance by such city or town for fiscal years commencing on or after July first, nineteen hundred and eighty-six, or for fiscal years commencing on or after such later July first as the city or town may elect. In those cities and towns which accept the provisions of this clause, the provisions of clauses Seventeenth and Seventeenth C shall not be applicable; provided, however, that the state treasurer shall annually reimburse the city or town an amount equal to the reimbursement granted to such city or town under said clause Seventeenth for the most recent fiscal year in which it received such reimbursement.

Seventeenth E, The amount of the whole estate, real and personal, as set forth in clauses Seventeenth, Seventeenth C, Seventeenth C½ and Seventeenth D, shall be increased annually by an amount equal to the increase in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for such year. The department of revenue shall annually inform each city or town that accepts this clause of the amount of this increase. This clause shall take effect in a city or town upon its acceptance by such city or town. Acceptance of this clause by a city or town shall not increase its reimbursement by the commonwealth under this section.

Eighteenth, Any portion of the estates of persons who by reason of age, infirmity and poverty, or financial hardship resulting from a change to active military status, not including initial enlistment are in the judgment of the assessors unable to contribute fully toward the public charges.

Eighteenth A, Real property, to an amount determined as hereinafter provided, of a person who by reason of poverty, or financial hardship resulting from a change to active military status, not including initial enlistment is in the judgment of the assessors unable to contribute fully toward the public charges and which property is owned and occupied by him as his domicile or owns the same jointly with a spouse or jointly or as a tenant in common with a person not a spouse and is occupied by him as his domicile provided, that such person has been domiciled in the commonwealth for the preceding 10 years.

Any such person may, on or before December 15 of each year to which the tax relates or within 3 months after the date on which the bill or notice is first sent, whichever is later, apply to the board of assessors for an exemption of such real property from taxation during such year; provided, however, that in the case of real estate owned by a person jointly or as a tenant in common with a person not his spouse, the exemption shall not exceed that proportion of total valuation which the amount of his interest in such property bears to the whole tax due. The board of assessors may grant such exemption provided that the owner or owners of such real property have entered into a tax deferral and recovery agreement with the board of assessors on behalf of the city or town. The agreement shall provide:—

(1) that no sale or transfer of such real property may be consummated unless the taxes which would otherwise have been assessed on such portion of the real property as is so exempt have been paid, with interest at the rate of 8 per cent per annum or such lesser rate as may be determined by the legislative body of the city or town, subject to its charter, not later than the beginning of the fiscal year to which the tax relates;

(2) that the total amount of such taxes due, plus interest, thereon, does not exceed 50 per cent of the owner's proportional share of the full and fair cash value of such real property;

(3) that upon the demise of the owner of such real property, the heirs-at-law, assignees or devisees shall have first priority to said real property by paying in full the total taxes which would otherwise have been due, plus interest; provided, however, that if such heir-at-law, assignee or devisee in a surviving spouse who enters into a tax deferral and recovery agreement under this clause, payment of the taxes and interest due shall not be required during the life of such surviving spouse. Any additional taxes deferred, plus interest, on said real property under a tax deferral and recovery agreement signed by a surviving spouse shall be added to the taxes and interest which would otherwise have been due, and the payment of which has been postponed during the life of such surviving spouse, in determining the 50 per cent requirement of clause (2);

(4) that if the taxes due, plus interest, are not paid by the heir-at-law, assignee or devisee or if payment is not postponed during the life of a surviving spouse, such taxes and interest shall be recovered from the estate of the owner; and

(5) that any joint owner or mortgagee holding a mortgage on such property has given written prior approval for such agreement, which written ap-

proval shall be made a part of such agreement; and

(6) that the tax deferral and recovery agreement shall not exceed 3 tax years, that the total amount of the taxes due, plus interest, shall be paid in 5 equal payments over a 5-year period, and that the first payment shall be due 2 years after the last day of the tax deferral.

In the case of each tax deferral and recovery agreement entered into between the board of assessors and the owner or owners of such real property, the board of assessors shall forthwith cause to be recorded in the registry of deeds of the county or district in which the city or town is situated a statement of their action which shall constitute a lien upon the land covered by such agreement for such taxes as have been assessed under this chapter, plus interest as provided hereinafter.

A lien filed pursuant to this section shall be subsequent to any liens securing a reverse mortgage, excepting shared appreciation instruments. The statement shall name the owner or owners and shall include a description of the land adequate for identification. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. The filing fee for such statement shall be paid by the city or town and shall be added to and become a part of the taxes due.

In addition to the remedies provided by this clause, the recorded statement of the assessors provided for in this clause shall have the same force and effect as a valid taking for nonpayment of taxes under the provisions of section 53 of chapter 60, except that: (1) interest shall accrue at the rate provided in this clause until the conveyance of the property or the death of the person whose taxes have been deferred, after which time interest shall accrue at the rate provided in section 62 of said chapter 60; (2) no assignment of the municipality's interest under this clause may be made pursuant to section 52 of said chapter 60; (3) no petition under section 65 of said chapter 60 to foreclose the lien may be filed before the expiration of 6 months from the conveyance of the property or the death of the person whose taxes have been deferred.

Nineteenth, Merchandise, machinery and animals owned by inhabitants of this commonwealth but situated in another state.

Twentieth, The wearing apparel, farming utensils and cash on hand of every person and the tools of his trade if a mechanic, to any amount; his household furniture and effects, including jewelry, plate, works of art, musical instruments, radios, television sets and garage or stable accessories, in storage in a public warehouse kept and maintained under chapter one hundred and five or used or commonly kept in or about the dwelling of which he is owner of record or for the use of which he is obligated to pay rent, and which is the place of his domicile; and, to an amount not exceeding a total value of ten thousand dollars, in respect to boats, fishing gear and nets owned and actually used by him in the prosecution of his business if engaged exclusively in commercial fishing; provided, that failure to comply with the provisions of sections twenty-nine and sixty-one relative to the filing of a list of his personal estate with the assessors shall not be a bar to an abatement of the tax, if any, imposed upon such personal estate.

Twenty-first, Mules, horses and neat cattle less than one year old; swine, sheep and goats less than six months old; domestic fowl not exceeding fifteen dollars in value; mules, horses, neat cattle, swine, sheep, goats and domestic fowl subject to an excise imposed by section eight A; neat cattle which are less than three years old and held for the personal use and consumption of the owner.

Twenty-second, Real estate of the following classes of persons who are legal residents of the commonwealth and who are veterans, as defined in clause Forty-third of section seven of chapter four, and whose last discharge or release from the armed forces was under other than dishonorable conditions and who were domiciled in Massachusetts for at least six months prior to entering such service, or who have resided in the commonwealth for five consecutive years next prior to date of filing for exemptions under this clause, hereinafter referred to in this clause as soldiers and sailors, provided such real estate is occupied in whole or in part as his domicile by such person, and provided, further that if the spouse of the soldier or sailor is also a soldier or sailor each shall receive the amount of exemption provided in this clause to the same extent as if unmarried, to the amount of two thousand dollars of assessed taxable valuation or the sum of $400, whichever would result in an abatement of the greater amount of actual taxes due. No real estate shall be so exempt which the assessors shall adjudge has been conveyed to a soldier or sailor or to the spouse, surviving spouse,

father or mother of a soldier or sailor to evade taxation.

(a) Soldiers and sailors who, as a result of disabilities contracted while in the line of duty, have a disability rating of ten per cent or more as determined by the Veterans Administration or by any branch of the armed forces. After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this clause shall be required in any subsequent year in the city or town in which the exemption has been allowed, unless the disability rating determined by the Veterans Administration or any branch of the armed forces is reduced to less than ten per cent; provided, however, that the assessors may refuse to allow an exemption in any subsequent year if they become aware that the soldier or sailor did not satisfy all of the requisites of this clause at the time the exemption was first granted.

(b) Soldiers and sailors who served in the military or naval service of the United States in the Spanish War, in the Philippine Insurrection or in the Chinese Relief Expedition and were discharged or released in any manner other than dishonorably therefrom.

(c) Soldiers and sailors who have been awarded the decoration of the Purple Heart. No evidence of disability shall be required under this paragraph. After the assessors have allowed an exemption under this paragraph, no further evidence of the receiving of the Purple Heart shall be required in any subsequent year in the city or town in which the exemption has been so allowed.

(d) Spouses of soldiers and sailors entitled to exemption under this clause and the surviving spouse of soldiers or sailors described in this clause who at the time of their death were entitled to exemption or who lost their lives while serving in said war or in said Insurrection or said Relief Expedition, so long as they remain unmarried.

(e) Fathers and mothers of soldiers or sailors who lost their lives in such service, provided that only two thousand dollars of the taxable valuation of real property or the sum of $400, whichever would result in an abatement of the greater amount of actual taxes due, of the real estate of any such father or mother held jointly by them shall be exempted; provided, further, that the words "father and mother" as appearing in this paragraph, shall be construed to include natural fathers and mothers, and fathers and mothers by adoption and persons who stood in loco parentis to such soldiers and sailors.

(f) Surviving spouses of soldiers or sailors who served in the armed forces of the United States between April sixth, nineteen hundred and seventeen and November eleventh, nineteen hundred and eighteen, or who were awarded the World War I Victory Medal; provided such spouses have remained unmarried and have resided in the commonwealth for five consecutive years next prior to the date of filing for exemption under this section; and provided, further, that the whole estate, real and personal, of such spouse does not exceed in value the sum of twenty thousand dollars, exclusive of the value of the mortgage interest held by persons other than such spouse in such mortgaged real estate as may be included in such whole estate. After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this paragraph will be required in any subsequent year in the city or town in which the exemption has been so allowed, except that the assessors may require an annual statement that such spouse has remained unmarried; provided, however, that the assessors may refuse to allow an exemption in any subsequent year if they become aware that the soldier or sailor did not satisfy all of the requisites of this clause at the time the exemption was first granted.

(g) For the purposes of this clause, $2,000.00 of this exemption or up to the sum of $175.00, whichever basis is applicable shall be borne by the city or town; the balance, up to the sum of $225 shall be borne by the commonwealth.

Twenty-second A, Real estate of soldiers and sailors and their spouses who are legal residents of the commonwealth and who are veterans, as defined in clause forty-three of section seven of chapter four and whose last discharge or release from the armed forces was under other than dishonorable conditions, and who were domiciled in Massachusetts for at least six months prior to entering such service or who have resided in the commonwealth for five consecutive years next prior to date of filing for exemption under this clause, who according to the records of the Veterans Administration or of any branch of the armed forces of the United States by reason of injury received or disease contracted while in such service and in the line of duty, lost or have suffered permanent loss of use of one foot at or above the ankle or lost or have suffered permanent loss of use of one hand at or above the wrist, or who according to the records of

the Veterans Administration by reason of injury received or disease contracted while in such service, is receiving a statutory award from the Veterans Administration for such loss or loss of sight of one eye, or who have been awarded the congressional medal of honor, the distinguished service cross, the navy cross or the air force cross, to the amount of four thousand dollars of the taxable valuation of real property or the sum of $750 whichever would result in an abatement of the greater amount, of actual taxes due, in the case of each person, provided that such real estate is occupied as his domicile by such person, and provided, further, that if said property be greater than a single family house, then only that value of so much of said house as is occupied by said person as his domicile or a proportionate part of $750, whichever would result in an abatement of the greater amount of actual taxes due, shall be exempted. After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this clause shall be required in any subsequent year in the city or town in which the exemption has been granted; provided, however, that the assessors may refuse to grant an exemption in any subsequent year if they become aware that the soldier or sailor did not satisfy all of the requisites of this clause at the time the exemption was first granted. An exemption under this clause shall continue unchanged for the benefit of the surviving spouse after the death of such disabled veteran as long as the surviving spouse of the qualified veteran shall remain an owner and occupant of a domicile subject to the exemption.

Two thousand dollars of this exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable shall be borne by the city or town; the balance, up to two thousand dollars of exemption or up to the sum of $575, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

Twenty-second B, Real estate of soldiers and sailors and their spouses who are legal residents of the commonwealth and who are veterans, as defined in clause forty-three of section seven of chapter four, and whose last discharge or release from the armed forces was under other than dishonorable conditions, and who were domiciled in Massachusetts for at least six months prior to entering such service, or who have resided in the commonwealth for five consecutive years next prior to the date of filing for exemption under this clause, who according to the records of the Veterans Administration or of any branch of the armed forces by reason of such service in the armed forces of the United States have suffered in the line of duty the loss or permanent loss of use of both feet at or above the ankle, or loss or permanent loss of use of both hands at or above the wrist or loss or permanent loss of use of one foot at or above the ankle and one hand at or above the wrist, or the loss of sight of both eyes as prescribed and certified by the Veterans Administration to the amount of eight thousand dollars of the taxable valuation of real property or the sum of $1,250, whichever would result in an abatement of the greater amount of actual taxes due, provided, that such real estate is occupied as his domicile by such person, and provided, further, that if said property be greater than a single family house then only that value of so much of said house as is occupied by said person as his domicile or a proportionate part of $1,250 whichever would result in an abatement of the greater amount of actual taxes due, shall be exempted. An exemption under this clause shall continue unchanged for the benefit of the surviving spouse after the death of such disabled veteran, as long as the surviving spouse of the qualified veteran shall remain an owner and occupant of a domicile subject to the exemption.

After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this clause shall be required in any subsequent year in the city or town in which the exemption has been so allowed; provided, however, that the assessors may refuse to allow an exemption in any subsequent year if they become aware that the soldier or sailor did not satisfy all of the requisites of this clause at the time the exemption was first granted.

Two thousand dollars of this exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable, shall be borne by the city or town; the balance up to six thousand dollars of exemption or up to the sum of $1,075, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

Twenty-second C, Real estate of soldiers and sailors and their spouses who are legal residents of

the commonwealth who are veterans, as defined in clause forty-three of section seven of chapter four, and whose last discharge or release from the armed forces was under other than dishonorable conditions, and who were domiciled in Massachusetts for at least six months prior to entering such service, or who have resided in the commonwealth for five consecutive years next prior to date of filing for exemption under this clause, and who according to the records of the Veterans Administration by reason of such service in the armed forces of the United States have suffered in the line of duty permanent and total disability, and who by reason of such disability have received assistance in acquiring "specially adapted housing" under laws administered by the Veterans Administration to the amount of ten thousand dollars of the taxable valuation of real property or the sum of $1,500, whichever would result in an abatement of the greater amount of actual taxes due, provided, that such real estate is occupied as his domicile by such person, and provided, further, that if said property be greater than a single family house then only that value of so much of said house as is occupied by said person as his domicile or a proportionate part of $1,500, whichever would result in an abatement of the greater amount of actual taxes due, shall be exempted. An exemption under this clause shall continue unchanged for the benefit of the surviving spouse after the death of such a disabled veteran, as long as the surviving spouse of the qualified veteran shall remain an owner and occupant of a domicile subject to the exemption.

After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this clause shall be required in any subsequent year in the city or town in which the exemption has been so allowed; provided, however, that the assessors may refuse to allow an exemption in any subsequent year if they become aware that the soldier or sailor did not satisfy all of the requisites of this clause at the time the exemption was first granted.

Two thousand dollars of this exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable, shall be borne by the city or town; the balance up to eight thousand dollars of exemption or up to the sum of $1,325, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

[Clause Twenty-second D applicable as provided by 2006, 260, Sec. 17.]

Twenty-second D, Real estate to the full amount of the taxable valuation of real property of the surviving spouses of soldiers and sailors and members of the National Guard whose death occurred as a proximate result of an injury sustained or disease contracted in a combat zone, or who are missing in action with a presumptive finding of death, as a result of combat as members of the armed forces of the United States, if the real estate is occupied by the surviving spouse as a domicile, and if the surviving spouse has been domiciled in the commonwealth for 5 consecutive years next before the date for filing for exemption under this clause or the soldier or sailor or member of the National Guard was domiciled in Massachusetts for at least 6 months before entering service.

Such exemption shall be available until such time that the surviving spouse dies or remarries; provided, however, that in no case shall the abatement amount exceed the sum of $2,500 in any fiscal year following the fifth fiscal year of receipt of the abatement.

No real estate shall be so exempt which has been conveyed to the surviving spouse to evade taxation. The amount of the exemption shall be borne by the commonwealth, and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected for this exemption.

Twenty-second E, Real estate of soldiers and sailors and their spouses who are legal residents of the commonwealth and who are veterans as defined in clause forty-three of section seven of chapter four, and who, as a result of disabilities contracted while in such service and in the line of duty, have a disability rating of one hundred per cent as determined by the Veterans Administration, and who were domiciled in the commonwealth for at least six months prior to entering such service, or who have resided in the commonwealth for five consecutive years next prior to date of filing for exemption under this clause, to the amount of six thousand dollars of the taxable valuation of real property or the sum of $1,000, whichever would result in an abatement of the greater amount of actual taxes due, provided, that such real estate is occupied as his domicile by such person; and provided further, that if said property be greater than

a single-family house, then only that value of so much of said house as is occupied by said person as his domicile or a proportionate part of $1,000, whichever would result in an abatement of the greater amount of actual taxes due, shall be exempted. An exemption under this clause shall continue unchanged for the benefit of the surviving spouse after the death of such disabled veteran as long as the surviving spouse of the qualified veteran shall remain an owner and occupant of a domicile subject to the exemption.

After the assessors have allowed an exemption under this clause, the assessors shall require an annual statement certifying that the disability rating as determined by the Veterans Administration has not been reduced to less than one hundred per cent.

No real estate shall be so exempt which the assessors shall adjudge has been conveyed to such soldier or sailor to evade taxation.

Two thousand dollars of this exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable, shall be borne by the city or town; the balance, up to four thousand dollars of exemption or up to the sum of $825, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

Notwithstanding the provisions of this section, in any city or town which accepts the provisions of this paragraph, said exemptions available under clauses twenty-second, twenty-second A, twenty-second B, twenty-second C, twenty-second D and twenty-second E may be granted to otherwise eligible persons who have resided in the commonwealth for one year prior to the date of filing for exemptions under the applicable clause.

[There is no clause Twenty-third.]

Twenty-fourth, All intangible personal property.

[There is no clause Twenty-fifth.]

Twenty-sixth, Land classified under chapter sixty-one, except from the taxes provided for in said chapter.

[There are no clauses Twenty-seventh to Thirty-fourth.]

Thirty-fifth, Motor vehicles and trailers subject to taxation or exempted from taxation under the provisions of chapter sixty A, irrespective of the date of registration thereof under chapter ninety.

Thirty-sixth, Manufactured homes located in manufactured housing communities subject to the monthly license fee provided for under section thirty-two G of chapter one hundred and forty and mobile homes deemed, by section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended,[1] not to be located or present in or have a situs in such city or town for the purposes of taxation in respect to personal property, and for the purposes of this clause, a manufactured or mobile home shall include, but not be limited to, normal repairs and domiciliary additions and that repairs and domiciliary additions shall include, but not be limited to, repair or replacement of existing masonry, addition or replacement of new ceiling, wall floor surfacing, air conditioning installation or any domiciliary attachment.

Thirty-seventh, Real property, to the amount of five thousand dollars of the taxable valuation of real property, or the sum of four hundred and thirty-seven dollars and fifty cents, whichever would result in an abatement of the greater amount of actual taxes due, of a blind person who is a legal resident of the commonwealth, whether such property is owned by him separately or jointly or as a tenant in common; provided, that such property is occupied by such person as his domicile. No real property shall be so exempt which has been conveyed to such blind person to evade taxation.

Four thousand dollars of this exemption or the sum of three hundred and fifty dollars, whichever basis is applicable, shall be borne by the city or town, the balance up to one thousand dollars of exemption or eighty-seven dollars and fifty cents, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

Thirty-seventh A, The sum of five hundred dollars of the actual taxes due, of a blind person who is a legal resident of the commonwealth, whether such property is owned by him separately or jointly or as a tenant in common; provided, that such property is occupied by such person as his domicile. No real property shall be exempt which has been conveyed to such blind person to evade taxation. This clause shall take effect upon its acceptance by any city or town. In those cities and towns which accept the provisions of this clause, the provisions

of clause thirty-seventh shall not be applicable; provided, however, the sum of eighty-seven dollars and fifty cents of this exemption shall be borne by the commonwealth, and the state treasurer shall annually reimburse the city or town for the amount thereof.

Thirty-eighth, In determining the valuation, for city and town tax purposes, of any privately-owned airport, the value of any improvements on or to the landing area shall not be included so long as the owner grants free use of the landing area to the general public for the landing, taking off and taxiing of aircraft; provided, however, that the airport shall meet the minimum requirements set forth by the aeronautics division in rules and regulations issued pursuant to section 39 of chapter 90 and is certified by the aeronautics division to be included within the needs of civil aeronautics as established by the state airport plan prepared pursuant to section 39A of said chapter 90 and is approved for commercial operation by the aeronautics division.

[There is no clause Thirty-ninth.]

Fortieth, Air-raid, bomb or fall-out shelters constructed under standards established by the Massachusetts emergency management agency of the commonwealth or the United States in or in connection with residential dwellings so long as such shelters shall be used exclusively for air-raid, bomb or fall-out protection.

Forty-first, Real property, to the amount of four thousand dollars of the taxable valuation of real property or the sum of five hundred dollars, whichever would amount in an abatement of the greater amount of taxes due, of a person who has reached his seventieth birthday prior to the fiscal year for which an abatement is sought and occupied by said person as his domicile, or of a person who owns the same jointly with his spouse, either of whom has reached his seventieth birthday prior to the fiscal year for which an abatement is sought and occupied by them as their domicile, or of a person who has reached his seventieth birthday prior to the fiscal year for which an abatement is sought who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile; provided; (A) that such person (1) has been domiciled in the commonwealth for the preceding ten years (2) has so owned and occupied such real property or other real property in the commonwealth for five years, or (3) is a surviving spouse who inherits such real property and has occupied such real property or other real property in the commonwealth for five years and who otherwise qualifies under this clause; (B) that such person had, in the preceding year, gross receipts from all sources of less than six thousand dollars, or, if married, combined gross receipts with his spouse of less than seven thousand dollars, provided, however, that in computing the gross receipts of an applicant under this clause ordinary business expenses and losses may be deducted, but not personal or family expenses, and provided, further, that there shall be deducted from the total amount received by the applicant under the federal social security or railroad retirement and from any annuity, pension, or retirement plan established for employees of the United States government, the government of the commonwealth, or the government of any city, town, county, or special district, included in such gross receipts, an amount equivalent to the minimum payment then payable under said federal social security law, as determined by the commissioner of revenue, to a retired worker seventy years of age or over, if the applicant is unmarried, or to a retired worker and spouse, both of whom are seventy years of age or over, if the applicant is married; and (C) that such person had a whole estate, real and personal, not in excess of seventeen thousand dollars, or if married, not in excess of twenty thousand dollars, provided that real property occupied as his domicile shall not be included in computing the whole estate except for any portion of said property which produces income, provided however that a taxpayer may, at his option, elect to include the value of real property occupied as his domicile in computing the value of his whole estate. If such real property is included in the whole estate, the value of the whole estate shall not exceed forty thousand dollars, or if married, forty-five thousand dollars. Household furnishings and property already exempt under the twelfth, twentieth, twenty-first, and thirty-fifth clauses of this section shall not be included in computing the whole estate. In the case of real estate owned by a person jointly or as a tenant in common with a person not his spouse, the amount of his exemption under this clause shall be that proportion of four thousand dollars valuation or the sum of five hundred dollars, whichever would result in an abatement of the greater amount of taxes due, which the amount of his interest in such property bears to the whole tax due; provided that no exemption shall be granted to any joint tenant or tenant in common unless the gross receipts from all sources whatsoever of each joint tenant or tenant in common is less than six thousand dollars or,

if married, the combined gross receipts from all sources whatsoever of each joint tenant or tenant in common and his spouse is less than seven thousand dollars and unless the combined whole estate, real and personal, of each joint tenant or tenant in common is less than twelve thousand dollars or, if married, the combined whole estate, real and personal of each joint tenant in common and his spouse does not exceed fifteen thousand dollars; and provided, further, that no proportion of the exemption shall be denied to any applicant otherwise qualified for the reason that another joint tenant or tenant in common receives a proportion of the total exemption. In determining the total period of ownership of an applicant for exemption under this clause, the time during which the same property was owned by a husband or wife individually shall be added to the period during which such property was owned by said husband and wife jointly. Where a portion of the real property occupied as a domicile of an applicant under this clause is located within a municipality other than the municipality in which the applicant is domiciled, and where the value of said property, or the taxes, assessed by the municipality in which such applicant is domiciled would result in his receiving less than the maximum exemption provided by this clause, that part of the property of such applicant within such other municipality shall be exempt to a value, or to an amount of tax, sufficient to grant the applicant the total maximum exemption provided by the clause. Any person who receives an exemption under the provisions of this clause shall not receive an exemption on the same property under any other provision of this section except clause Eighteen.

Any amount of money annually appropriated by the commonwealth for the purpose of reimbursing cities and towns for taxes abated under this clause, clause Forty-first B, clause Forty-first C, and clause Forty-first C ½ shall be distributed as hereinafter provided. The commissioner of revenue shall divide said sum by the number of exemptions under this clause, clause Forty-first B, clause Forty-first C and clause Forty-first C ½ granted in the preceding fiscal year and distribute to each city and town a pro rata share of said sum based upon the number of such exemptions granted in each city and town. If a city or town has elected to grant exemptions under clause Forty-first B, clause Forty-first C or clause Forty-first C ½ in lieu of this clause, the number of exemptions granted in such city or town, for purposes of this computation, shall not exceed the number of exemptions granted under this clause in such city or town in the most recent fiscal year in which such exemptions under this clause were granted. If a city of town has elected to grant exemptions under clause Forty-first C ½ in lieu of this clause, the value of exemptions granted, for purposes of this exemption, shall not be greater than $500 per residence for which an exemption is granted.

Forty-first A, Real property, to an amount determined as hereinafter provided, of a person sixty-five years of age or over and occupied by him as his domicile, of a person who owns the same jointly with his spouse, either of whom is sixty-five years of age or over, and occupied as their domicile, or of a person who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile; provided, that such person has been domiciled in the commonwealth for the preceding ten years and

(1) has so owned and occupied as his domicile such real property or other real property in the commonwealth for five years; or

(2) is a surviving spouse who inherits such real property and has occupied such real property or other real property in the commonwealth as his or her domicile for five years and who otherwise qualifies under this clause; and provided further that such person, and such person and his spouse, if married, had, during the preceding year, gross receipts from all sources not in excess of twenty thousand dollars. Any city or town may also, by vote of its legislative body, adopt a higher maximum qualifying gross receipts amount for the purposes of this section; provided, however, that such maximum qualifying gross receipts amount shall not exceed the amount of income determined by the commissioner of revenue for the purposes of subsection (k) of section 6 of chapter 62, for a single person who is not a head of household.

In determining the total period ownership of an applicant for exemption under this clause, the time during which the same property was owned by a husband or wife individually shall be added to the period during which such property was owned by said husband and wife jointly. In computing the gross receipts of such an applicant or of such an applicant and his spouse, if married, ordinary business expenses and losses may be deducted but not personal and family expenses.

Any such person may, on or before December fifteenth of each year to which the tax relates or

within three months after the date on which the bill or notice is first sent, whichever is later, apply to the board of assessors for an exemption of all or part of such real property from taxation during such year; provided, however, that in the case of real estate owned by a person jointly or as a tenant in common with a person not his spouse, the exemption shall not exceed that proportion of total valuation which the amount of his interest in such property bears to the whole tax due. The board of assessors shall grant such exemption provided that the owner or owners of such real property have entered into a tax deferral and recovery agreement with said board of assessors on behalf of the city or town. The said agreement shall provide:

(1) that no sale or transfer of such real property may be consummated unless the taxes which would otherwise have been assessed on such portion of the real property as is so exempt have been paid, with interest at the rate of eight per cent per annum or such lesser rate as may be determined by the legislative body of the city or town, subject to its charter, no later than the beginning of the fiscal year to which the tax relates;

(2) that the total amount of such taxes due, plus interest, for the current and prior years does not exceed fifty per cent of the owner's proportional share of the full and fair cash value of such real property;

(3) that upon the demise of the owner of such real property, the heirs-at-law, assignees or devisees shall have first priority to said real property by paying in full the total taxes which would otherwise have been due, plus interest; provided, however, if such heir-at-law, assignee or devisee is a surviving spouse who enters into a tax deferral and recovery agreement under this clause, payment of the taxes and interest due shall not be required during the life of such surviving spouse. Any additional taxes deferred, plus interest, on said real property under a tax deferral and recovery agreement signed by a surviving spouse shall be added to the taxes and interest which would otherwise have been due, and the payment of which has been postponed during the life of such surviving spouse, in determining the fifty per cent requirement of subparagraph (2);

(4) that if the taxes due, plus interest, are not paid by the heir-at-law, assignee or devisee or if payment is not postponed during the life of a surviving spouse, such taxes and interest shall be recovered from the estate of the owner; and

(5) that any joint owner or mortgagee holding a mortgage on such property has given written prior approval for such agreement, which written approval shall be made a part of such agreement.

In the case of each tax deferral and recovery agreement entered into between the board of assessors and the owner or owners of such real property, said board of assessors shall forthwith cause to be recorded in the registry of deeds of the county or district in which the city or town is situated a statement of their action which shall constitute a lien upon the land covered by such agreement for such taxes as have been assessed under the provisions of this chapter, plus interest as hereinafter provided. A lien filed pursuant to this section shall be subsequent to any liens securing a reverse mortgage, excepting shared appreciation instruments. The statement shall name the owner or owners and shall include a description of the land adequate for identification. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. The filing fee for such statement shall be paid by the city or town and shall be added to and become a part of the taxes due.

In addition to the remedies provided by this clause, the recorded statement of the assessors provided for in this clause shall have the same force and effect as a valid taking for nonpayment of taxes under the provisions of section fifty-three of chapter sixty, except that: (1) interest shall accrue at the rate provided in this clause until the conveyance of the property or the death of the person whose taxes have been deferred, after which time interest shall accrue at the rate provided in section sixty-two of chapter sixty; (2) no assignment of the municipality's interest under this clause may be made pursuant to section fifty-two of chapter sixty; (3) no petition under section sixty-five of chapter sixty to foreclose the lien may be filed before the expiration of six months from the conveyance of the property or the death of the person whose taxes have been deferred.

Forty-first B, Real property, to the amount of four thousand dollars of taxable valuation or the sum of five hundred dollars, whichever would amount in an exemption of the greater amount of taxes due, of a person who has reached his seventieth birthday prior to the fiscal year for which an exemption is sought and occupied by said person as his domicile, or of a person who owns the same jointly with his spouse, either of whom has reached

his seventieth birthday prior to the fiscal year for which an exemption is sought and occupied by them as their domicile, or for a person who has reached his seventieth birthday prior to the fiscal year for which an exemption is sought who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile; provided: (A) that such person (1) has been domiciled in the commonwealth for the preceding ten years, (2) has so owned and occupied such real property or other real property in the commonwealth for five years, or (3) is a surviving spouse who inherits such real property and has occupied such real property in the commonwealth five years and who otherwise qualified under this clause; (B) that such person had, in the preceding year gross receipts from all sources of less than ten thousand dollars, or if married, combined gross receipts with his spouse of less than twelve thousand dollars, provided, however, that in computing the gross receipts of an applicant under this clause ordinary business expenses and losses may be deducted, but not personal or family expenses, and provided, further, that there shall be deducted from the total amount received by the applicant under the federal social security or railroad retirement and from any annuity, pension, or retirement plan established for employees of the United States government, the government of the commonwealth, or the government of any city, town, county, or special district, included in such gross receipts, an amount equivalent to the minimum payment then payable under said federal social security law, as determined by the commissioner of revenue, to a retired worker seventy years of age or over, if the applicant is unmarried, or to a retired worker and spouse, both of whom are seventy years of age or over, if the applicant is married; and (C) that such person had a whole estate, real and personal, not in excess of twenty thousand dollars, or if married, not in excess of twenty-three thousand dollars, provided that real property occupied as his domicile shall not be included in computing the whole estate except for any portion of said property which produces income. In the case of real property owned by a person jointly or as a tenant in common with a person not his spouse, the amount of his exemption under this clause shall be that proportion of four thousand dollars valuation or the sum of five hundred dollars, whichever would result in an exemption of the greater amount of taxes due, which the amount of his interest in such property bears to the whole tax due; provided: (A) that no exemption shall be granted to any joint tenant or tenant in common unless the gross receipts from all sources whatsoever of each joint tenant or tenant in common is less than ten thousand dollars or, if married, the combined gross receipts from all sources whatsoever of each joint tenant or tenant in common and his spouse is less than twelve thousand dollars, provided, however, that in computing the gross receipts of an applicant under this clause ordinary business expenses and losses may be deducted, but not personal or family expenses, and provided, further, that there shall be deducted from the total amount received by the applicant under the federal social security or railroad retirement and from any annuity, pension, or retirement plan established for employees of the United States government, the government of the commonwealth, or the government of any city, town, county, or special district, included in such receipts, an amount equivalent to the minimum payment then payable under said federal social security law, as determined by the commissioner of revenue, to a retired worker seventy years of age or over, if the applicant is unmarried, or to a retired worker and spouse, both of whom are seventy years of age or over, if the applicant is married; and (B) that the combined whole estate, real and personal, of each joint tenant or tenant in common is less than twenty thousand dollars or, if married, the combined whole estate, real and personal of each joint tenant or tenant in common and his spouse does not exceed twenty-three thousand dollars, provided that real property occupied as their domicile shall not be included in computing the whole estate except for any portion of said property which produces income. No proportion of the exemption shall be denied to any applicant otherwise qualified for the reason that another joint tenant or tenant in common receives a proportion of the total exemption. Household furnishings and property already exempt under the twelfth, twentieth, thirty-first, and thirty-fifth clauses of this section shall not be included in computing the whole estate for purposes of this section. Where a portion of the real property occupied as a domicile of an applicant under this clause is located within a municipality other than the municipality in which the applicant is domiciled, and where the value of said property, or the taxes, assessed by the municipality in which such applicant is domiciled would result in his receiving less than the maximum exemption provided by this clause, that part of the property of such applicant within such other municipality shall be exempt to a value, or to an amount of tax, sufficient to grant the applicant the total maximum

exemption provided by the clause. This clause shall take effect upon its acceptance by any city or town. In those cities and towns which accept the provisions of this clause, the provisions of clause Forty-first shall not be applicable; provided, however, that any amount of money annually appropriated by the commonwealth for the purpose of reimbursing cities and towns for taxes abated under this clause and clause Forty-first shall be distributed as provided in said clause Forty-first.

Forty-first C, Real property, to the amount of four thousand dollars of taxable valuation or the sum of five hundred dollars, whichever would amount in an exemption of the greater amount of taxes due, of a person who has reached his seventieth birthday prior to the fiscal year for which an exemption is sought and occupied by said person as his domicile, or of a person who owns the same jointly with his spouse, either of whom has reached his seventieth birthday prior to the fiscal year for which an exemption is sought and occupied by them as their domicile, or for a person who has reached his seventieth birthday prior to the fiscal year for which an exemption is sought who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile; provided: (A) that such person (1) has been domiciled in the commonwealth for the preceding ten years, (2) has so owned and occupied such real property or other real property in the commonwealth for five years, or (3) is a surviving spouse who inherits such real property and has occupied such real property in the commonwealth five years and who otherwise qualified under this clause; (B) that such person had, in the preceding year gross receipts from all sources of less than thirteen thousand dollars, or if married, combined gross receipts with his spouse of less than fifteen thousand dollars, provided, however, that in computing the gross receipts of an applicant under this clause ordinary business expenses and losses may be deducted, but not personal or family expenses; and provided, further, that there shall be deducted from the total amount received by the applicant under the federal social security or railroad retirement and from any annuity, pension, or retirement plan established for employees of the United States government, the government of the commonwealth, or the government of any city, town, county, or special district, included in such gross receipts, an amount equivalent to the minimum payment then payable under said federal social security law, as determined by the commissioner of revenue, to a retired worker seventy years of age or over, if the applicant is unmarried, or to a retired worker and spouse, both of whom are seventy years of age or over, if the applicant is married; and (C) that such person had a whole estate, real and personal, not in excess of twenty-eight thousand dollars, or if married, not in excess of thirty thousand dollars, provided that real property occupied as his domicile shall not be included in computing the whole estate except for any portion of said property which produces income and exceeds two dwelling units. A city, by vote of its council and approval of its mayor, or a town, by vote of town meeting, may adjust the following factors contained in these provisions by: 1) reducing the requisite age of eligibility to any person age 65 years or older; 2) increasing either or both of the amounts contained in the first sentence of this clause, by not more than 100 per cent; 3) increasing the amounts contained in subclause (B) of said first sentence whenever they appear in said subclause from $13,000 to not more than $20,000 and from $15,000 dollars to not more than $30,000; 4) increasing the amounts contained in subclause (C) of said first sentence whenever they appear in said subclause from $28,000 dollars to not more than $40,000 and from $30,000 to not more than $55,000; and 5) by further excluding from the determination of whole estate up to 3 dwelling units. In the case of real property owned by a person jointly or as a tenant in common with a person not his spouse, the amount of his exemption under this clause shall be that proportion of four thousand dollars valuation or the sum of five hundred dollars, whichever would result in an exemption of the greater amount of taxes due, which the amount of his interest in such property bears to the whole tax due, provided: (A) that no exemption shall be granted to any joint tenant or tenant in common unless the gross receipts from all sources whatsoever of each joint tenant or tenant in common is less than thirteen thousand dollars or, if married, the combined gross receipts from all sources whatsoever, of each joint tenant or tenant in common and his spouse is less than fifteen thousand dollars, provided, however, that in computing the gross receipts of an applicant under this clause ordinary business expenses and losses may be deducted, but not personal or family expenses; and provided, further, that there shall be deducted from the total amount received by the applicant under the federal social security or railroad retirement and from an annuity, pension, or retirement plan established for employees of the United States

government, the government of the commonwealth, or the government of any city, town, county, or special district, included in such receipts, an amount equivalent to the minimum payment then payable under said federal social security law, as determined by the commissioner of revenue, to a retired worker seventy years of age or over, if the applicant is unmarried, or to a retired worker and spouse, both of whom are seventy years of age or over, if the applicant is married; and (B) that the combined whole estate, real and personal, of each joint tenant or tenant in common is less than twenty-eight thousand dollars or, if married, the combined whole estate, real and personal of each joint tenant or tenant in common and his spouse does not exceed thirty thousand dollars, provided that real property occupied as their domicile shall not be included in computing the whole estate except for any portion of said property which produces income and exceeds two dwelling units. No proportion of the exemption shall be denied to any applicant otherwise qualified for the reason that another joint tenant or tenant in common receives a proportion of the total exemption. Household furnishings and property already exempt under the clauses Twelfth, Twentieth, Thirty-first, and Thirty-fifth shall not be included in computing the whole estate for purposes of this section. Where a portion of the real property occupied as a domicile of an applicant under this clause is located within a municipality other than the municipality in which the applicant is domiciled, and where the value of said property, or the taxes, assessed by the municipality in which such applicant is domiciled would result in his receiving less than the maximum exemption provided by this clause, that part of the property of such applicant within such other municipality shall be exempt to a value, or to an amount of tax, sufficient to grant the applicant the total maximum exemption provided by the clause. This clause shall take effect in any city or town upon its acceptance by such city or town for fiscal years commencing on or after July first, nineteen hundred and eighty-six, or for fiscal years commencing on or after such later July first as the city or town may elect. In those cities and towns which accept the provisions of this clause, the provisions of clause Forty-first and Forty-first B shall not be applicable; provided, however, that any amount of money annually appropriated by the commonwealth for the purpose of reimbursing cities and towns for taxes abated under this clause, clause Forty-first and clause Forty-first B shall be distributed as provided in said clause Forty-first.

Forty-first C½, Real property, of an amount equal to 5 per cent of the average assessed value of all Class one parcels within the city or town of the principal residence of a taxpayer as used by the taxpayer for income tax purposes of a person who has reached his seventieth birthday before the beginning of the fiscal year for which an exemption is sought and occupied by the person as his domicile, or of a person who owns the same jointly with his spouse, either of whom has reached his seventieth birthday before the beginning of the fiscal year for which an exemption is sought and occupied by them as their domicile, or of a person who has reached his seventieth birthday before the beginning of the fiscal year for which an exemption is sought who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile if: (A) the person: (1) has been domiciled in the commonwealth for the preceding 10 years; (2) has owned and occupied the real property or other real property in the commonwealth for 5 years, or (3) is a surviving spouse who inherits the real property and has occupied this real property in the commonwealth for 5 years and who otherwise qualified under this clause; and (B) the taxpayer's gross receipts from all sources do not exceed the dollar amount calculated to be the income limits on a taxpayer's total income for a single individual who is not the head of a household for the purposes of paragraph (3) of subsection (k) of section 6 of chapter 62 for the most recently completed state tax year, as determined by the commissioner of revenue.

A city or town, by vote of its legislative body, subject to its charter, may adjust the exemption contained in this clause by: (1) increasing the amount of the exemption to as much as 20 per cent of the average assessed value of all Class one parcels within the city or town; (2) reducing the requisite age of eligibility to any person age 65 years or older; and (3) reducing the residency requirements to not less than 5 years; and (4) utilizing income limits on a household basis rather than on a single applicant basis for real estate tax exemptions.

This clause shall take effect in any city or town that votes to accept its terms at the next regularly scheduled municipal election for any fiscal year commencing on or after July 1, 2006. The question appearing on the official ballot shall be in the following form:

"Shall section ___ of the acts of ___ granting real estate property tax reductions to qualifying senior citizens be accepted?"

If a majority of the votes cast in answer to this question is in the affirmative, the clause shall take effect, but not otherwise.

In those cities and towns that accept this clause, clauses Forty-first, Forty-first B and Forty-first C shall not apply but any amount of money annually appropriated by the commonwealth for the purpose of reimbursing cities and towns for taxes abated under this clause, clause Forty-first, clause Forty-first B and clause Forty-first C shall be distributed as provided in said clause Forty-first.

Forty-first D, The amounts of the gross receipts and whole estate, real and personal, as set forth in clauses Forty-first, Forty-first B and Forty-first C, shall be increased annually by an amount equal to the increase in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for such year. The department of revenue shall annually inform each city or town that accepts this clause of the amount of this increase. This clause shall take effect in a city or town upon its acceptance by such city or town. Acceptance of this clause by a city or town shall not increase its reimbursement by the commonwealth under this section.

Forty-second, Real estate of the surviving spouse, until remarried, of a police officer or firefighter killed in the line of duty as such police officer or firefighter; provided that such real estate is owned, and occupied by such surviving spouse as a domicile, and provided, further, that no real estate shall be so exempt which the assessors shall adjudge has been conveyed to such spouse to evade taxation.

Forty-third, Real estate of the surviving minor children, including adopted children, of a police officer or firefighter killed in the line of duty as such police officer or firefighter; provided that such real estate is owned and occupied by such children as their domicile, and provided, further, that no real estate shall be so exempt which the assessors shall adjudge has been conveyed to such children to evade taxation.

Forty-fourth, Any structure, building, device, appliance, machinery, equipment or other property, whether consisting of real or tangible personal property, or a combination of both, which is constructed, installed or placed in operation, in whole or in part, for the purpose of eliminating industrial waste or reducing such waste to a level of toxicity that is not injurious to fish, fowl, animal life or aquatic vegetation and thereby abating or preventing the pollution of the waters of the commonwealth or for the purpose of abating, preventing or eliminating industrial pollution of the atmosphere of the commonwealth. This exemption shall apply to facilities for the treatment, neutralization or stabilization of industrial waste or industrial air pollution from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable. The term "industrial waste" and the term "industrial air pollution", as used in this section, shall mean any liquid, gaseous, solid or waste substance, or a combination thereof, resulting from any process of industry, manufacture, trade or business or from the development or recovery of any natural resources, which may cause or might reasonably be expected to cause pollution of the waters or the atmosphere of the commonwealth.

If any such structure, building, device, appliance, machinery, equipment or other property is used solely and in its entirety for the elimination or control of water or air pollution, the exemption granted hereunder shall be total; if, however, only a portion of such structure, building, device, appliance, machinery, equipment or other property is used for the elimination or control of water or air pollution, the exemption shall be prorated as follows: for structures and buildings, the ratio which the area or volume, as applicable, thereof used solely for pollution control bears to the entire area or volume; for devices, appliances, machinery, equipment or other property, the ratio which the operating time devoted solely to pollution control bears to the total operating time.

No exemption shall be granted under this clause unless the department of environmental protection certifies to the assessors of the city or town involved that such structure, building, device, appliance, machinery, equipment or other property is effective in eliminating or reducing pollution to an acceptable level. No exemption shall be granted under this clause to any hazardous waste facility sited under the provisions of said chapter twenty-one D, which is maintained principally for the treatment of hazardous waste produced by other

persons and transported to the facility for treatment and disposal.

Forty-fifth, Any solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under this chapter; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of the installation of such system or device.

Forty-fifth A, Any hydropower facility, the construction of which was commenced after January first, nineteen hundred and seventy-nine; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of completion of the construction of such facility; and provided further, that such facility shall be exempt only if the owner thereof has entered into an agreement with the city or town, wherein it is located, to make a payment in lieu of taxes which shall be at least five per cent of its gross income in the preceding calendar year. For the purposes of this clause, hydropower facility shall mean any real property used in the production of energy from the water power of an existing dam, including land, all rights, easements and other interests appurtenant thereto, excluding transmission lines from such facilities, and all buildings and other improvements situated thereon, and any personal property situated upon such real property.

Forty-sixth, Real estate, owned by an economic development corporation whose purpose is to retain and expand job opportunities and which is organized under chapter one hundred and eighty, from the date of said real estate's acquisition until such real property is leased, rented, or otherwise disposed of; provided said exemption for such real property should not extend beyond a total period of seven years; and provided, further, that if the whole or any part of any such real estate is used for other than the purpose of said corporation and derives any income from such use, such real estate or part thereof, as the case may be, shall not be exempt.

Forty-seventh, Real property subject to taxation under section ten of chapter one hundred and twenty-one A.

Forty-eighth, Land classified under chapter sixty-one B, except from taxes provided for in said chapter.

Forty-ninth, Land classified under chapter sixty-one A, except from taxes provided for in said chapter.

Fiftieth, the increased value of residential real property as a result of alterations or improvements thereto, not to exceed five hundred dollars of taxes due; provided, however, that said alterations or improvements are made to provide housing for a person who is at least sixty years old and who is not the owner of the premises; provided further, that any such alterations or improvements must be made to a house, consisting of no more than three units prior to such alterations or improvements and which is owned and occupied by the applicant as his domicile; and provided, further, that the applicant shall annually furnish to the assessors a statement under oath that the alterations or improvements were made to provide housing for a person who is at least sixty years old. This exemption shall terminate when the premises are no longer occupied by any such elderly person. No person shall receive more than one exemption under the provisions of this clause in any fiscal year. This clause shall take effect upon its acceptance by any city or town and shall apply only to alterations or improvements made on or after the date of such acceptance by such city or town.

Fifty-first, the value of a parcel of real property which is included within an executed agreement under clause (v) of section 59, clause (v) of subsection (a) of section 60 or clause (iv) of subsection (a) of section 60A of chapter 40, and the value of personal property situated on that parcel, but taxes on real and personal property eligible for exemption under this clause shall be assessed only on that portion of the value of the property that is not exempt under section 59, section 60 or section 60A of chapter 40, and this exemption shall be for a term not longer than the period specified for the exemption in the agreement. The amount of the exemption under this clause for a parcel of real property shall be the exemption percentage adopted under clause (iii) of section 59, subsection (a) of section 60 or of section 60A of said chapter 40 multiplied by the amount by which the parcel's value exceeds the product of its assessed value for the last fiscal year before it became eligible for exemption under this clause multiplied by the adjustment factor determined under said section 59, section 60 or section 60A of said chapter 40. The amount of the exemption under this clause for personal property shall be the exemption percentage adopted under clause (iii) of section 59, subsec-

tion (a) of section 60 or of section 60A of said chapter 40 multiplied by the fair cash valuation of the personal property. Taxes on property eligible for exemption under this clause shall be assessed only on that portion of the value of the property that is not exempt under this clause.

Fifty-second. (a) Notwithstanding any other provision of this section, any elderly homeowner who meets the criteria described in subsection (c) shall receive an abatement of an amount equal to the difference between any increase in property taxes attributable to the provisions of paragraph (n) of section twenty-one C and the amount by which the applicant's water and sewer bill would be higher if the amount of said increase in property taxes were recovered in water and sewer charges, which difference shall be calculated by the board or officer responsible for fixing water and sewer charges, and certified to the board of assessors; provided, however, that said abatement shall not be greater than two hundred dollars.

(b) The commonwealth shall annually appropriate the amount necessary fully to reimburse cities and towns for taxes abated under this clause. Subject to said appropriation, the commissioner of revenue shall distribute to each city and town its full reimbursement amount based on the number and amount of such abatements granted.

(c) The criteria for eligibility for this abatement shall be as follows. The property for which the abatement is sought must be owned by a person sixty-five years of age or over and occupied by him as his domicile, or owned jointly with his spouse, either of whom is sixty five years of age or over, and occupied as their domicile, or by a person who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile. No abatement shall be granted unless said owner had, in the preceding year, gross receipts from all sources of less than fifteen thousand dollars, or, if married, combined gross receipts of less than eighteen thousand dollars; provided, however, that in computing the gross receipts of an applicant under this clause, ordinary business expenses and losses may be deducted, but not personal or family expenses; provided, further, that no abatement shall be granted unless in the preceding year, such owner had a whole estate, real and personal, not in excess of twenty thousand dollars, or, if married, a combined estate not in excess of twenty-five thousand dollars, provided that real property occupied as his domicile shall not be included in computing the whole estate except for any portion of said property which produces income. In the case of real estate owned by a person jointly or as a tenant in common with a person not his spouse, the amount of his exemption under this clause shall be that proportion of the amount described in subsection (a) which the amount of his interest in the property bears to the whole value of the property; provided that no abatement shall be granted to any joint tenant or tenant in common unless the gross receipts from all sources whatsoever of each joint tenant or tenant in common is less than fifteen thousand dollars, or, if married, the combined gross receipts from all sources whatsoever of each joint tenant or tenant in common and his spouse is less than eighteen thousand dollars and unless the combined whole estate, real and personal, of each joint tenant or tenant in common is less that [2] twenty thousand dollars or, if married, the combined whole estate, real and personal of each joint tenant in common with his spouse does not exceed twenty-five thousand dollars; and provided, further, that no proportion of the exemption shall be denied to any applicant otherwise qualified for the reason that another joint tenant or tenant in common receives a proportion of the total exemption. Notwithstanding any provision of this section, or any other general or special law to the contrary, this abatement shall be available in addition to any other abatement which a homeowner may receive.

Fifty-third. Residential real estate that uses a septic system or cesspool and is not connected to the municipal sewer system in a city or town that has accepted the provisions of paragraph (n) of section twenty-one C shall receive an exemption equal to the difference between any increase in property taxes attributable to the provisions of said paragraph (n) and the amount by which the water bills for the property would have been higher if the amount of said increase in property taxes were recovered in water charges, which difference shall be calculated by the board or officer responsible for fixing water and sewer charges and certified to the board of assessors, provided that said exemption shall not exceed three hundred dollars. Notwithstanding any other provisions of this section, an owner eligible for another exemption under this section may receive an exemption under this clause in addition to such other exemption. This clause shall take effect in any city or town upon its acceptance.

Fifty-fourth. Personal property, if less than an amount established by the city or town, but not in

excess of $10,000 of value. This clause shall take effect upon its acceptance by a city or town, which shall establish a minimum value of personal property subject to taxation and may modify the minimum value by vote of its legislative body.

Fifty-fifth. With respect to real property owned by a cooperative corporation, as defined in section 4 of chapter 157B, that portion which is occupied by a member pursuant to a proprietary lease as the member's domicile shall be deemed to be real property owned by such member for the purposes of this section, provided, that such portion of the real estate is represented by the member's share or shares of stock in the cooperative corporation and the percentage of such portion to the whole is determined by the percentage of the member's shares to the total outstanding stock of the corporation, including shares owned by the corporation. Such portion of such real property shall be eligible for any exemption provided in this section if such member meets all requirements for such exemption. Any exemption so provided shall reduce the taxable valuation of the real property owned by the cooperative corporation; provided, however, that the reduction in taxes realized thereby shall be credited by the cooperative corporation against the amount of such taxes otherwise payable by or chargeable to such member. Nothing in this clause shall be construed to affect the tax status of any manufactured home or mobile home under this chapter, but shall apply to the land on which such manufactured home or mobile home is located if all other requirements of this clause are met. This clause shall take effect in a city or town upon its acceptance by the city or town.

Notwithstanding any provision of general or special law to the contrary, an abatement granted pursuant to clause Seventeenth, Seventeenth C, Seventeenth C½ or Seventeenth D may be increased annually in the discretion of a city or town by an amount not to exceed the increase in the cost of living as determined by the Consumer Price Index for such year. This paragraph shall take effect in a city or town upon its acceptance by such city or town.

Fifty-sixth. Upon the acceptance of this section by a city or town, the board of assessors may grant, real and personal property tax abatement up to 100 per cent of the total tax assessed to members of the Massachusetts National Guard and to reservists on active duty in foreign countries for the fiscal year they performed such service subject to eligibility criteria to be established by the board of assessors.

The authority to grant abatements under this section shall expire after 2 years of acceptance unless extended by a vote of the city or town.

Fifty-seventh. Upon the acceptance of this section by a city or town, the board of assessors may appropriate monies for and grant property tax rebates in an amount not to exceed annually the amount of the income tax credit set forth under subsection (k) of section 6 of chapter 62.

Amended by St.1933, c. 198, § 1; St.1935, c. 294; St.1936, c. 81; St.1936, c. 362, § 1; St.1937, c. 132; St.1938, c. 47; St.1938, c. 317; St.1939, c. 24, § 2; St.1939, c. 451, §§ 19, 20; St.1941, c. 227, §§ 1, 2; St.1941, c. 467; St.1941, c. 482; St.1945, c. 627, § 1; St.1946, c. 579; St.1947, c. 83, § 1; St.1947, c. 310; St.1947, c. 612, § 1; St.1948, c. 560; St.1948, c. 644, §§ 1, 2; St.1949, c. 206; St.1949, c. 534, § 1; St.1949, c. 732; St.1951, c. 640, § 1; St.19512 667, § 2; St.1951, c. 275; St.1952, c. 232, § 1; St.1952, c. 583, § 2; St.1953, c. 231; St.1953, c. 347; St.1953, c. 379; St.1953, c. 654, § 28; St.1954, c. 245; St.1954, c. 341; St.1954, c. 351; St.1954, c. 435, § 1; St.1954, c. 683, §§ 1, 2; St.1955, c. 312; St.1955, c. 403, § 3; St.1956, c. 381, §§ 1 to 3; St.1956, c. 384; St.1956, c. 400, § 1; St.1956, 651; St.1956, c. 690, § 3; St.1957, c. 444, § 2; St.1957, c. 500, § 1; St.1957, c. 525, §§ 1 to 4; St.1957, c. 541; St.1958, c. 282, §§ 1, 2; St.1959, c. 88, § 2; St.1959, c. 233, § 1; St.1959, c. 444, § 1; St.1960, c. 18; St.1960, c. 414, § 1; St.1960, c. 764, § 1; St.1960, c. 811, §§ 1, 2; St.1962, c. 439; St.1962, c. 644, § 2; St.1962, c. 666, §§ 1 to 3; St.1963, c. 160, §§ 8, 10; St.1963, c. 345; St.1963, c. 808, § 1; St.1964, c. 69; St.1964, c. 285, § 1; St.1964, c. 354, § 1; St.1964, c. 681, § 1; St.1964, c. 715, § 1; St.1965, c. 212, § 1; St.1965, c. 267, §§ 1, 2; St.1965, c. 398; St.1965, c. 615, § 1; St.1965, c. 620, §§ 1, 2; St.1965, c. 881; St.1966, c. 216, § 1; St.1966, c. 262; St.1966, c. 294, § 1; St.1966, c. 359, §§ 1 to 3; St.1966, c. 371; St.1966, c. 419; St.1966, c. 700, § 2; St.1966, c. 728; St.1967, c. 212, § 1; St.1968, c. 464, § 1; St.1969, c. 129; St.1969, c. 292, §§ 1 to 3 St.1969, c. 884, § 4; St.1970, c. 179, § 1; St.1970, c. 219, § 1; St.1970, c. 234, § 1; St.1970, c. 270, §§ 1, 2; St.1970, c. 456, § 1; St.1970, c. 600, § 1; St.1971, c. 449, § 1; St.1971, c. 1110, §§ 1 to 6, 8 to 10; St.1971, c. 1069, § 1; St.1972, c. 144, § 1; St.1972, c. 186, § 1; St.1972, c. 707, § 2; St.1973, c. 696, §§ 1, 2; St.1973, c. 872, § 1; St.1974, c. 287, § 1; St.1974, c. 347, § 1; St.1974, c. 811, §§ 1, 2; St.1974, c. 823; St.1974, c. 831, §§ 1 to 3; St.1975, c. 283; St.1975, c. 706, §§ 112, 113; St.1975, c.

734, § 1; St.1975, c. 734, § 2; St.1976, c. 89; St.1976, c. 263, § 1; St.1977, c. 889, §§ 2 to 5; St.1977, c. 964; St.1977, c. 967, § 1; St.1977, c. 992, § 2; St.1978, c. 258; St.1978, c. 388; St.1978, c. 435, § 1; St.1978, c. 514, §§ 73, 74; St.1978, c. 580, §§ 17 to 22, 24 to 29; St.1978, c. 581, § 3; St.1979, c. 339, § 1; St.1979, c. 367; St.1979, c. 713, § 3; St.1979, c. 777, § 1; St.1980, c. 411, § 1; St.1981, c. 743, § 1; St.1982, c. 258; St.1982, c. 319; St.1982, c. 634, § 7; St.1982, c. 653, §§ 1 to 5; St.1983, c. 72, § 3; St.1983, c. 540, § 2; St.1983, c. 670, § 1; St.1984, c. 189, § 53; St.1985, c. 489; St.1985, c. 727; St.1986, c. 73, §§ 1 to 3; St.1986, c. 112; St.1986, c. 200, § 1; St.1986, c. 361, §§ 1, 2; St.1986, c. 407; St.1986, c. 557, §§ 68, 68A; St.1987, c. 499, § 1; St.1987, c. 758, §§ 1, 2, 4; St.1988, c. 42, § 3; St.1988, c. 292, § 1; St.1989, c. 494; St.1989, c. 614, § 2; St.1990, c. 177, § 132; St.1991, c. 7, § 1A; St.1991, c. 138, §§ 126, 381; St.1991, c. 405, § 1; St.1991, c. 481, § 8; St.1992, c. 286, § 131; St.1993, c. 19, § 14; St.1993, c. 110, §§ 110, 111; St.1995, c. 38, 63; St.1995, c.181, § 1; St.1996, c. 373, § 1; St.1996, c. 426, § 1; St.1997, c. 88, §§ 12 to 17, 20 to 22; St.1997, c. 164, § 70; St.2000, c. 159, §§ 109 to 114; St.2000, c. 380, §§ 1, 2; St.2002, c. 184, § 51; St.2002, c. 470; St.2003, c. 26, § 190, eff. July 1, 2003; St.2003, c. 46, §§ 43 to 48, eff. July 31, 2003; St.2004, c. 149, § 105, eff. July 1, 2004; St.2004, c. 178, §§ 2, 3, eff. July 1, 2004; St.2004, c. 352, §§ 24, 25, eff. Sept. 17, 2004; St.2005, c. 136, § 1, eff. Nov. 20, 2005; St.2006, c. 123, §§ 42 to 48, eff. June 24, 2006; St.2006, c. 139, § 41, eff. July 1, 2006; St.2006, c. 260, §§ 1 to 8, 9A to 11, eff. July 1, 2006; St.2006, c. 260, § 9, eff. Nov. 12, 2006; St.2006, c. 310, § 8, eff. Nov. 12, 2006; St.2008, c. 61, eff. June 17, 2008; St.2008, c. 173, §§ 2 to 6, eff. July 3, 2008; St.2008, c. 182, § 14, eff. July 1, 2008; St.2009, c. 25, § 66, eff. July 1, 2009; St.2010, c. 188, §§ 39 to 42, eff. July 27, 2010; St.2010, c. 240, §§ 108, 109, eff. Aug. 1, 2010; St.2010, c. 258, § 1, eff. Aug. 7, 2010.

1 50 App. U.S.C.A. § 574.

2 So in original; probably should read "less than".

Historical and Statutory Notes

St.1821, c. 107, § 2.
St.1821, c. 107, § 6.
St.1827, c. 66.
St.1829, c. 27, § 2.
St.1830, c. 151, § 6.
R.S.1836, c. 7, § 5.
R.S.1836, c. 7, § 5, cl. 1.
R.S.1836, c. 7, § 5, cl. 2.
R.S.1836, c. 7, § 5, cl. 4.
R.S.1836, c. 7, § 5, cl. 5.
R.S.1836, c. 7, § 5, cl. 6.
R.S.1836, c. 7, § 5, cl. 8.
St.1841, c. 127.
St.1841, c. 114, § 7.
St.1851, c. 215.
St.1853, c. 122.
St.1858, c. 43, § 1.
G.S.1860, c. 11, § 5.
G.S.1860, c. 11, § 5, cl. 1.
G.S.1860, c. 11, § 5, cl. 2.
G.S.1860, c. 11, § 5, cl. 3.
G.S.1860, c. 11, § 5, cl. 7.
G.S.1860, c. 11, § 5, cl. 8.
G.S.1860, c. 11, § 5, cl. 9.
G.S.1860, c. 11, § 5, cl. 10.
G.S.1860, c. 11, § 5, cl. 11.
G.S.1860, c. 11, § 5, cl. 13.
St.1862, c. 224, § 12.
St.1864, c. 208, § 15.
St.1865, c. 206, § 1.
St.1867, c. 101.
St.1874, c. 375, § 8.
St.1878, c. 131.
St.1878, c. 206, § 1.
St.1878, c. 214.
St.1880, c. 109.
St.1880, c. 143.
P.S.1882, c. 11, § 5.
P.S.1882, c. 11, § 5, cl. 1.
P.S.1882, c. 11, § 5, cl. 2.
P.S.1882, c. 11, § 5, cl. 3.
P.S.1882, c. 11, § 5, cl. 6.
P.S.1882, c. 11, § 5, cl. 7.
P.S.1882, c. 11, § 5, cl. 8.
P.S.1882, c. 11, § 5, cl. 9.
P.S.1882, c. 11, § 5, cl. 10.
P.S.1882, c. 11, § 5, cl. 11.
P.S.1882, c. 11, § 5, cl. 12.
P.S.1882, c. 11, § 7.
P.S.1882, c. 13, § 23.
St.1882, c. 217, § 2.
St.1884, c. 176.
St.1885, c. 169.
St.1886, c. 231.
St.1888, c. 158.
St.1889, c. 465.
St.1890, c. 63.
St.1894, c. 220.
St.1894, c. 315.
St.1895, c. 202.
St.1897, c. 148.
St.1898, c. 370.
R.L.1902, c. 12, § 5.
R.L.1902, c. 12, § 5, cl. 1.
R.L.1902, c. 12, § 5, cl. 2.
R.L.1902, c. 12, § 5, cl. 3.
R.L.1902, c. 12, § 5, cl. 4.
R.L.1902, c. 12, § 5, cl. 5.
R.L.1902, c. 12, § 5, cl. 7.
R.L.1902, c. 12, § 5, cl. 8.
R.L.1902, c. 12, § 5, cl. 9.
R.L.1902, c. 12, § 5, cl. 10.
R.L.1902, c. 12, § 5, cl. 11.
R.L.1902, c. 12, § 5, cl. 12.
R.L.1902, c. 12, § 5, cl. 13.
R.L.1902, c. 12, § 6.
R.L.1902, c. 14, §§ 21, 23.
St.1903, c. 437, § 71.
St.1904, c. 385.
St.1907, c. 329.
St.1907, c. 367.
St.1908, c. 120.
St.1908, c. 193.
St.1909, c. 187.
St.1909, c. 490, pt. 1, § 5.
St.1909, c. 490, pt. 1, § 5, cl. 1.
St.1909, c. 490, pt 1, § 5, cl. 2, § 12.
St.1909, c. 490, pt. 1, § 5, cl. 3.
St.1909, c. 490, pt. 1, § 5, cl. 4.
St.1909, c. 490, pt 1, § 5, cl. 7.
St.1909, c. 490, pt. 1, § 5, cl. 8.
St.1909, c. 490, pt. 1, § 5, cl. 9.
St.1909, c. 490, pt 1, § 5, cl. 10.
St.1909, c. 490, pt. 1, § 5, cl 11
St.1909, c. 490, pt 1, § 5, cl. 12.
St.1909, c. 490, pt. 1, § 5, cl. 13.
St.1909, c. 490, pt. 1, § 6.
St.1909, c. 490, pt. 1, § 11.
St.1909, c. 490, pt. 3, §§ 23, 25.

St.1909, c. 516, § 1.
St.1910, c. 559, § 3.
St.1910, c. 619, § 7.
St.1911, c. 400, § 1.
St.1911, c. 409.
St.1911, c. 532, § 7.
St.1911, c. 628, § 30.
St.1911, c. 634, § 1.
St.1913, c. 578.
St.1913, c. 832, § 8.
St.1914, c. 518.
St.1914, c. 523.
St.1914, c. 598, §§ 5, 26.
St.1915, c. 40.
St.1915, c. 268, § 8.
St.1916, c. 144, § 1.
St.1916, c. 144, § 2.
St.1916, c. 269, § 2(a).
St.1917, c. 136.
St.1917, c. 204.
St.1917, c. 327, § 74, cl. (b).
St.1918, c. 42.
St.1918, c. 106.
St.1918, c. 257, § 34.
St.1919, c. 5.
St.1919, c. 355, §§ 12, 27.
St.1920, c. 2.
St.1920, c. 137.
St.1920, c. 415, § 7.
St.1920, c. 575, § 1.
G.L.1921, c. 60A.
St.1921, c. 389.
St.1921, c. 474.
St.1921, c. 486, § 16.
St.1922, c. 216.
St.1922, c. 222.
St.1922, c. 451, § 1.
St.1924, c. 17, § 1.
St.1924, c. 321, § 1.
St.1926, c. 279, § 1.
St.1927, c. 11.
St.1928, c. 77, § 1.
St.1928, c. 379, § 3.
St.1928, c. 379, § 4.
St.1930, c. 220, § 10.
St.1930, c. 247.
St.1930, c. 416, § 9.
St.1930, c. 416, § 10.
St.1931, c. 75.
St.1931, c. 184, § 1.
St.1931, c. 394, § 13.

§ 5A. Repealed, 1965, 620, Sec. 3

§ 5B. Appeals; eligibility for exemption under Sec. 5, third clause; corporations or trusts

Any person of a city or town aggrieved by a determination of the board of assessors as to the eligibility or noneligibility of a corporation or trust for the exemption granted pursuant to the clause Third of section five may appeal therefrom by filing a petition with the clerk of the appellate tax board in accordance with the provisions of section seven of chapter fifty-eight A within three months of said determination. As used in this section the term "person" shall mean the corporation or trust applying for the exemption or an individual, corporation, or trust engaged in a business activity in direct competition with an activity conducted by the charitable corporation or trust.

Added by St.1977, c. 992, § 3.

§ 5C. Exemptions for residential real property in cities or towns assessing at full and fair cash valuation

With respect to each parcel of real property classified as Class One, residential, in each city or town certified by the commissioner to be assessing all property at its full and fair cash valuation, and at the option of the board of selectmen or mayor, with the approval of the city council, as the case may be, there shall be an exemption equal to not more than twenty per cent of the average assessed value of all Class One, residential, parcels within such city or town; provided, however, that such an exemption shall be applied only to the principal residence of a taxpayer as used by the taxpayer for income tax purposes. This exemption shall be in addition to any exemptions allowable under section five; provided, however, that in no instance shall the taxable valuation of such property after all applicable exemptions be reduced below ten per cent of its full and fair cash valuation, except through the applicability of section eight A of chapter fifty-eight and of clause Eighteenth of section five. Where, under the provisions of section five, the exemption is based upon an amount of tax rather than on valuation, the reduction of taxable valuation for purposes of the preceding sentence shall be computed by dividing the said amount of tax by the residential class tax rate of the city or town and multiplying the result by one thousand dollars. For purposes of this paragraph, "parcel" shall mean a unit of real property as defined by the assessors in accordance with the deed for such property and shall include a condominium unit.

In those cities and towns in which an exemption is made available hereunder, a taxpayer aggrieved by the failure to receive such residential exemption may apply for such residential exemption to the assessors, in writing, on a form approved by the commissioner within three months after the date on which the bill or notice of assessment was sent.

A timely application filed hereunder shall, for the purposes of this chapter, be treated as a timely filed application pursuant to section fifty-nine.

For purposes of this section, with respect to real property owned by a cooperative corporation, as

defined in section 4 of chapter 157B, that portion which is occupied by a member pursuant to a proprietary lease as such member's domicile and is used as such member's principal residence for income tax purposes shall be deemed to be real property owned by such member for purposes of this section, provided that the portion of the real estate is represented by the member's share or shares of stock in the cooperative corporation and the percentage of such portion to the whole is the percentage of such member's shares in the cooperative corporation to the total outstanding stock of the corporation, including shares owned by the corporation. Such portion of such real property shall be eligible for exemption from taxation pursuant to this section if such member meets all requirements for such exemption. Any exemption so provided shall reduce the taxable valuation of the real property owned by the cooperative corporation; provided, however, that the reduction in taxes realized thereby shall be credited by the cooperative corporation against the amount of such taxes otherwise payable by or chargeable to such member. Nothing in this paragraph shall be construed to affect the tax status of any manufactured home or mobile home under this chapter, but shall apply to the land on which such manufactured home or mobile home is located if all other requirements of this paragraph are met. This paragraph shall take effect in a city or town upon its acceptance by the city or town.

Added by St.1979, c. 797, § 12. Amended by St.1982, c. 369, § 5; St.1985, c. 382; St.1988, c. 200, § 2; St.2003, c. 46, § 49, eff. July 31, 2003.

§ 5D. Property held by city, town or district in another city or town for water supply, etc.; purposes; tax liability; stumpage fees

Property held by a city, town or district, including property held by or for the watershed system of the division of watershed management of the metropolitan district commission, and the waterworks system of the Massachusetts Water Resources Authority, as successors to the metropolitan water district, pursuant to the provisions of the Massachusetts Water Resources Authority Act, in another city or town for the purpose of a water supply, the protection of its sources or a sewage disposal, or of a public airport if yielding no rent, shall not be liable to taxation therein; but the city, town or district so holding it shall annually on July first, pay to the city or town in which such property is located an amount equal to that which such city or town would receive in taxes upon the average of the assessed taxable valuation of the land, which shall not include buildings or other structures except in the case of land taken for the purpose of protecting the sources of an existing water supply, for the three years last preceding the acquisition thereof, the valuation for each year being reduced by all abatements thereon. Payments made by the division of watershed management of said department and by the metropolitan water and sewer authority pursuant to the provisions of this section for the year when a city or town shall have made a general revaluation of all its real property for purposes of taxation shall not be less than payment made to said city or town for the year immediately preceding the general revaluation. Whenever a city or town in which such land is located shall have made a general revaluation or reassessment of all of its real property for purposes of taxation, the valuation of such land for the purpose of payments authorized by this section shall be determined by the assessors of said city or town as of January first, between January first and June first, in the year succeeding such revaluation or reassessment by dividing the amount of the payment authorized by this section for the year last preceding the revaluation or reassessment by the commercial class tax rate of said city or town for the year of the revaluation or reassessment, so that the payment with respect to such land shall remain substantially the same as that made prior to such revaluation or reassessment. The city, town or district owning such land or the division of watershed management of said department and the metropolitan water and sewer authority, if aggrieved by the determination of the assessors, may within six months after written notice thereof appeal to the appellate tax board. Any part of such land or buildings from which any revenue in the nature of rent is received shall be subject to taxation. Revenue received for the use of such areas of land within the property so held for the purpose of a public airport as are used for the take-off and landing of aircraft, including runways and taxi strips, or for the use of buildings on such property which are used as a terminal or administration building or for housing, servicing and repairing aircraft, shall not be deemed to be rent or revenue in the nature of rent within the meaning of this paragraph.

If such land is part of a larger tract which has been assessed as a whole, its assessed valuation in any year shall be taken to be that proportional part

of the valuation of the whole tract which the value of the land so acquired, exclusive of buildings, bore in such year to the value of the whole tract.

In addition to the tax payment hereinbefore provided, any municipality that owns watershed land located in another municipality shall pay annually to the municipality wherein such land is located, a stumpage fee equal to eight per cent of the stumpage value of all forest products cut therefrom with authorization of the owner.

The provisions of chapter sixty-one shall apply to the payment of stumpage fees hereunder.

Added by St.1979, c. 797, § 12. Amended by St.1982, c. 657, § 1; St.1984, c. 372, § 38; St.1986, c. 138, § 1; St.1987, c. 518, § 1; St.2003, c. 26, § 191, eff. July 1, 2003.

§ 5E. Valuation of land held by city or town in another city or town; certification; appeals

The assessors of a city or town where land is acquired by such other city, town or district for water supply or sewage disposal or for a public airport shall, within one year after such acquisition, determine the average valuation of such land under section five D and certify the amount so determined to such other city, town or district. The mayor or selectmen, the commissioners or prudential committee of a district, or the division of watershed management of the metropolitan district commission or the Massachusetts Water Resources Authority, within six months after receipt of said certificate, may appeal from such determination to the appellate tax board; and upon the approval of said board shall determine the valuation in the manner provided in the preceding section, and section sixty-five, so far as applicable, shall govern such appeal.

If land within any city or town shall have been taken from it for said purposes, and for any one of the three years prior to the taking shall have been used for any public purpose, and for that reason no taxes have been collected thereon, the city or town and the board or officer having charge of the land so taken may within six years after such taking agree as to the value of the land upon which the annual payment is to be made as aforesaid from the time of the taking, and if they cannot agree the board or officer shall notify the city or town thereof, and thereupon the value shall be determined by the appellate tax board under said section sixty-five, and said notice shall be deemed to be the notice referred to in said section sixty-five. This section and section five D shall apply to property held for the purposes of the watershed system of said division and the waterworks system of said Authority, except property situated in Ashland, Boylston, Holden, Hopkinton, Sterling or West Boylston, but shall apply only to property acquired by a city, town or district, prior to January first, nineteen hundred and forty-six, including land or property acquired for water supply purposes prior to such date by the metropolitan district commission, or a predecessor entity thereof and comprising any or all of the watershed system of said division or waterworks system of said Authority pursuant to the provisions of the Massachusetts Water Resources Authority Act.

Added by St.1979, c. 797, § 12. Amended by St.1984, c. 372, § 39.

§ 5F. Holding municipalities or districts; tax liability for lands held in other municipalities or districts; stumpage fees

Land acquired on or after January first, nineteen hundred and forty-six, by a municipality or a district including land held by or for the watershed system of the division of watershed management and by or for the waterworks system of the Massachusetts Water Resources Authority, as successors to the metropolitan water district, and held on January first in any year for any public purpose by such municipality, in this section referred to as the holding municipality, or by such district, if such land is located in a municipality other than such holding municipality, or, in the case of land so acquired and held by a district, in a municipality other than the municipality or municipalities in which the district lies or which constitute the district, shall, with all buildings and other things erected thereon or affixed thereto, be exempt from taxation for the next following fiscal year except as hereinafter otherwise provided: such holding municipality or district shall, on July first of such year, pay to the municipality in which such land is located the amount which would be assessable for the next following fiscal year upon a valuation equal to the average of the assessed taxable valuations of the land and all buildings and other things erected thereon or affixed thereto on the three assessment dates next preceding the acquisition of the land, the assessed valuation for each assessment date being reduced by all abatements, if any. If land subject to this section was not separately assessed or was exempt from taxation on any of said assessment dates, the fair cash value of the

land and all buildings and other things erected thereon or affixed thereto on such assessment date shall for the purposes of this section be deemed to be the assessed valuation thereof on such date. Payments made by said division or said Authority pursuant to the provisions of this section for the year when a city or town shall have made a general revaluation of all its real property for purposes of taxation shall not be less than payments made to said city or town for the year immediately preceding the general revaluation. Whenever a city or town in which such land is located shall be certified by the commissioner as assessing property at full and fair cash valuation under the provisions of section fifty-six of chapter forty, the valuation of such land shall be determined by the assessors of the municipality in which such land is located as of January first of the year of such certification subject to the commissioner's determination, under the provisions of section one A of chapter fifty-eight and subsection (c) of section two A of this chapter, that said valuations are at full and fair cash valuation. The valuations so determined shall be used for the purpose of payments authorized by this section in the year succeeding such determination and the following years thereafter. The division of watershed management of the metropolitan district commission or the Massachusetts Water Resources Authority or the holding municipality or district, if aggrieved by the determination of the assessors, may within six months after written notice thereof appeal to the appellate tax board.

The assessors of the municipality where land subject to this section lies shall determine the average valuation in accordance with this section and certify such valuation to the holding municipality or district liable under this section. The division of watershed management of the metropolitan district commission, or the Massachusetts Water Resources Authority or the holding municipality or district, if aggrieved by such determination, may within three months, after such certification appeal to the appellate tax board, which shall determine the average valuation in accordance with this section.

In addition to the tax payment hereinbefore provided, any municipality that owns watershed land located in another municipality shall pay annually to the municipality wherein such land is located, a stumpage fee equal to eight per cent of the stumpage value of all forest products cut therefrom with authorization of the owner.

The provisions of chapter sixty-one shall apply to the payment of stumpage fees hereunder.

If rent or any revenue in the nature of rent is received from any part of any real estate subject to this section, the party yielding such rent or revenue shall be subject to taxation. The tax shall be in addition to the amount payable under this section. Revenue received for the use of such portions of a public airport as are used for the taking-off and landing of airplanes, including runways, taxi and transition strips, or revenue received for the use of buildings on a public airport, which are actually and exclusively used for servicing and repairing airplanes, shall not be deemed to be rent or revenue in the nature of rent within the meaning of this paragraph.

Added by St.1979, c. 797, § 12. Amended by St.1982, c. 657, § 2; St.1984, c. 372, § 40; St.1986, c. 138, § 2; St.1987, c. 518, § 2.

§ 5G. Payment to cities or towns for property held for water supply or related purposes

The Massachusetts Water Resources Authority, on July first of each year, shall pay over to the division of watershed management, an amount to be held in trust for payment to each city or town in which property of the Quabbin watershed, Wachusett Watershed, Sudbury Watershed and Ware River watershed is held by said division for purposes of a water supply or the protection of its sources, said amount to equal that which such city or town would receive in taxes upon the fair cash valuation of the land, which shall not include buildings or other structures except in the case of land taken for the purposes of protecting the sources of an existing water supply, the valuation for each year being reduced by all abatements thereon; provided that in no event shall any city or town receive an amount less than the payment received from the metropolitan district commission in the prior fiscal year. Said division shall pay such amounts without further appropriation to such city or town no later than August first of each year. Payments made by said Authority pursuant to the provisions of this section for the year when a city or town shall have made a general revaluation of all its real property for purposes of taxation shall not be less than payment made to said city or town for the year immediately preceding the general revaluation. Whenever a city or town in which such land is located shall have made a general revaluation or reassessment of all of its real property for purposes of taxation, the valuation of such land for the purpose of payments authorized by this section shall be determined by the assessors of said city or

town as of January first, between January first and June first, in the year succeeding such revaluation or reassessment by dividing the amount of the payment authorized by this section for the year last preceding the revaluation or reassessment by the commercial class tax rate of said city or town for the year of the revaluation or reassessment, so that payment with respect to such land shall remain substantially the same as that made prior to such revaluation or reassessment; provided, however, that notwithstanding any other provision of this section, the valuation of such land, held by and for the division of watershed management, for the purpose of payments in lieu of taxes pursuant to this section, shall be determined by the commissioner of revenue in accordance with the provisions of sections thirteen to seventeen, inclusive, of chapter fifty-eight. In no event shall any city or town receive an amount less than the payment received from the metropolitan district commission in the prior fiscal year. The city, town, district, or authority owning such land, or said division of watershed management, if aggrieved by the determination of the assessors, may within six months after written notice thereof appeal to the appellate tax board. Any part of such land or buildings from which any revenue in the nature of rent is received shall be subject to taxation.

If such land is part of a larger tract which has been assessed as a whole, its assessed valuation in any year shall be taken to be that proportional part of the value of the whole tract which the value of the land so acquired, exclusive of buildings, bore in such year to the value of the whole tract.

The Massachusetts Water Resources Authority on July first of each year, shall pay over to the said division of watershed management, an amount to be held in trust for payments in lieu of taxes to the towns of Belchertown, Hardwick, New Salem, Pelham, Petersham and Ware for watershed lands of the Quabbin Reservation which were included in the former towns of Dana, Greenwich, Enfield, and Prescott. Said amounts to be held in trust as payments in lieu of taxes shall be made only on lands which are above the high water mark of the total acreage in question that is held by each community; provided however, that the sum of said payments shall not be less than fifty thousand dollars annually, and shall be valued in accordance with the provisions of sections thirteen to seventeen, inclusive, of chapter fifty-eight. In no event shall any city or town receive an amount less than the payment received from the metropolitan district commission in the prior fiscal year.

Added by St.1984, c. 372, § 40A. Amended by St.1987, c. 518, § 3; St.1987, c. 564, § 52.

§ 5H. Payments to municipalities for certain watershed land; difference in assessment

The state treasurer, acting for and on behalf of the commonwealth, shall on July first of each year pay to the municipality in which land regulated under section one hundred and seven A of chapter ninety-two is located, and which is not held by the division or by the Authority, the difference between the current assessment for such year and the assessment of such land, not taking into consideration the effect of said section.

Added by St.1992, c. 36, § 1.

§ 5*I*. Exemption; conditions

With respect to each parcel of real property classified as class three, commercial, in each city or town certified by the commissioner to be assessing all property at its full and fair cash valuation, and at the option of the board of selectmen or mayor, with the approval of the city council, as the case may be, there shall be an exemption equal to not more than ten percent of the value of the parcel; provided, however, that such exemption shall only apply to property that is occupied by a business that, at that location and all others combined, had an average annual employment of no more than ten during the previous calendar year as certified by the secretary of labor and workforce development or, where the business is a sole proprietorship or partnership not subject to the provisions of chapter 151A, as determined by the assessors, and the assessed valuation of which is less than one million dollars. This exemption shall be in addition to any exemptions allowable under section five. The value of exemptions granted under this section shall be borne by the combined value of class three commercial property and class four industrial property.

In cities and towns in which an exemption is made available hereunder, a taxpayer aggrieved by the failure to receive such commercial exemption may apply for such commercial exemption to the assessors, in writing, on a form approved by the commissioner within three months after the date on which the bill or notice of assessment was sent.

A timely application filed hereunder shall, for the purposes of this chapter, be treated as a timely filed application pursuant to section 59.

Added by St.1993, c. 110, § 112. Amended by St.1998, c. 161, § 289; St.2000, c. 159, §§ 115, 116; St.2011, c. 3, § 108, eff. Mar. 27, 2011.

§ 5J. Special assessment policy; historic owner-occupied residences

A city or town, by adoption of an ordinance or by-law, may establish a special assessment policy for the substantial rehabilitation of owner-occupied residential properties listed in the state register of historic places, either individually or as contributing elements within an historic district. For such properties, the increase in assessed value resulting from such rehabilitation shall be phased in one-fifth increments over a period of five years to the full assessed value of the property; provided, however, that the rehabilitation shall meet the standards of the Massachusetts historical commission in order to be eligible for the phased in special assessment; and provided further, that the secretary of the commonwealth, as chairman of the Massachusetts historical commission, shall promulgate applicable rules and regulations to carry out the provisions of this section.

Added by St.1996, c. 191, § 1.

§ 5K. Property tax liability reduced in exchange for volunteer services; persons over age 60

In any city or town which accepts the provisions of this section, the board of selectmen of a town or in a municipality having a town council form of government, the town council or the mayor with the approval of the city council in a city may establish a program to allow persons over the age of 60 to volunteer to provide services to such city or town. In exchange for such volunteer services, the city or town shall reduce the real property tax obligations of such person over the age of 60 on his tax bills and any reduction so provided shall be in addition to any exemption or abatement to which any such person is otherwise entitled and no such person shall receive a rate of, or be credited with, more than the current minimum wage of the commonwealth per hour for services provided pursuant to such reduction nor shall the reduction of the real property tax bill exceed $1,000 in a given tax year. It shall be the responsibility of the city or town to maintain a record for each taxpayer including, but not limited to, the number of hours of service and the total amount by which the real property tax has been reduced and to provide a copy of such record to the assessor in order that the actual tax bill reflect the reduced rate. A copy of such record shall also be provided to the taxpayer prior to the issuance of the actual tax bill. Such cities and towns shall have the power to create local rules and procedures for implementing this section in any way consistent with the intent of this section.

In no instance shall the amount by which a person's property tax liability is reduced in exchange for the provision of services be considered income, wages, or employment for purposes of taxation as provided in chapter 62, for the purposes of withholding taxes as provided in chapter 62B, for the purposes of workers' compensation as provided in chapter 152 or any other applicable provisions of the General Laws, but such person while providing such services shall be considered a public employee for the purposes of chapter 258, but such services shall be deemed employment for the purposes of unemployment insurance as provided in chapter 151A.

A city or town, by vote of its legislative body, subject to its charter, may adjust the exemption in this clause by: (1) allowing an approved representative, for persons physically unable, to provide such services to the city or town; or (2) allowing the maximum reduction of the real property tax bill to be based on 125 volunteer service hours in a given tax year, rather than $1,000.

Added by St.1999, c. 127, § 59. Amended by St.2002, c. 184, § 52; St.2005, c. 6, § 7, eff. Feb. 24, 2005; St.2009, c. 27, § 24, eff. July 1, 2009; St.2010, c. 188, § 43, eff. July 27, 2010.

§ 5L. Deferral of taxes due by member of the Massachusetts National Guard or reservist on active duty outside commonwealth

Upon acceptance of this section by a municipality and notwithstanding any other provision of this chapter to the contrary, any taxes due under this chapter by a member of the Massachusetts National Guard or reservist or a dependent of a member of the Massachusetts National Guard or reservist shall be deferred while that member is on active service outside the commonwealth and for the next 180 days after that service. No interest or penalties shall be assessed for any period before the expiration of those 180 days.

Added by St.2006, c. 260, § 12, eff. July 1, 2006.

§ 5M. Exemption for market rate units contained in a certified housing development project

A gateway municipality, as defined in section 1 of chapter 40V, may, by vote of its legislative body, subject to the charter of the municipality, establish an exemption in an amount not less than 10 per cent and not more than 100 per cent of the incremental value of the market rate units contained in a certified housing development project within a housing development zone under chapter 40V, for a period of not less than 5 years and not more than 20 years. For the purposes of this section, "market rate residential unit" shall mean a market rate residential unit as defined in section 1 of chapter 40V. Such exemption shall be approved by the department of housing and community development, as established in chapter 23B. The department shall promulgate applicable rules and regulations to carry out this section.

Added by St.2010, c. 240, § 110, eff. Aug. 1, 2010.

§§ 6 to 7A. Repealed, 1978, 580, Sec. 30

Historical and Statutory Notes

See c. 59, §§ 5D to 5F.

§ 8. Interstate, foreign trade or fishing ships or vessels; assessment; abatement

Individuals or partnerships owning an interest in any ship or vessel which has during the period of its business in the year preceding January first been engaged in interstate or foreign carrying trade or engaged exclusively in fishing and documented and carrying "papers" under the laws of the United States shall annually, on or before April first following, make a return on oath to the assessors of the town where such individuals reside or where such partnerships are taxable under clause seventh of section eighteen, respectively, setting forth the name of the ship or vessel, their interest therein, and the value of such interest. If the assessors are satisfied of the truth of the return they shall assess an excise tax of one third of one per cent upon such interest; and the person or partnership making such return shall be exempt from any tax upon said interest other than that assessed under this section.

In case the owner of any such interest fails to make a return within the time herein provided, the assessors may abate the tax upon such interest if he shows to the assessors a reasonable excuse for the failure to file such return as aforesaid and if the return is filed on or before December thirty-first of the year in which the tax is assessed; but no abatement hereunder shall be made which will reduce the tax on any such interest to an amount less than the sum of said excise plus fifty per cent thereof.

Amended by St.1933, c. 80; St.1933, c. 254, § 26; St.1935, c. 119, § 1.

Historical and Statutory Notes

St.1881, c. 284, §§ 1 to 3, 5, 6.
P.S.1882, c. 11, §§ 8 to 10.
St.1887, c. 373.
St.1889, c. 286.
St.1891, c. 116.
St.1893, c. 149.
St.1898, c. 353.
R.L.1902, c. 12, §§ 7 to 9.
St.1902, c. 374, § 3.
St.1902, c. 375.
St.1909, c. 490, pt. 1, § 7.
St.1913, c. 473, § 2.
St.1928, c. 143, § 1.

§ 8A. Excise tax on farm machinery and equipment and farm animals; abatement; collection; voter approval to not impose excise

Any person, not including a corporation, engaged principally in agriculture, who owns farm machinery and equipment, other than motor vehicles and trailers which are exempt under clause Thirty-fifth of section five, or mules, horses, neat cattle, swine, sheep, goats, domestic fowl or mink, which are not exempt under clause Twenty-first of section five, and any individual under eighteen years of age who owns and raises any such animals or fowl in connection with an agricultural youth program, including but not limited to the 4H Clubs and Future Farmers of America, which are not exempt under said clause Twenty-first of section five, shall annually, on or before March first, make a return on oath to the assessors of the town where such machinery and equipment or such animals and fowl are located, setting forth the make, age, model, if any, and purchase price of such machinery and equipment and the number and kind of each class of such animals and fowl owned by him on the next preceding January first. For the purposes of this section the term "equipment" shall include plastic covered greenhouses used for agricultural, horticultural or floricultural purposes, which are not constructed upon a concrete foundation. If the assessors are satisfied of the truth of the return they shall assess such machinery and equipment and such animals and fowl at the rate of five dollars per one thousand dollars of valuation, as determined by the commissioner of revenue, of

such machinery and equipment and of each class and kind of such animals and fowl, and such persons shall be otherwise exempt from taxation on these classes of property under this chapter.

If an owner, as described in the first paragraph, fails to make a return within the time provided therein, the assessors may abate a tax otherwise imposed by this chapter if he provides the assessors with a reasonable excuse for failure to file such return as aforesaid, and if a return is filed on or before October thirty-first of the year to which the tax relates; but no abatement hereunder shall reduce the tax otherwise imposed to an amount less than the sum of the excise imposed by this chapter plus fifty per cent thereof. No tax shall be due if the actual tax due is less than ten dollars.

The excise imposed hereunder shall be committed by the board of assessors to the collector of taxes together with their warrant for the collection thereof in the same manner as real and personal property taxes assessed under this chapter. The collector shall notify the person assessed of the amount of the excise in the manner provided in section three of chapter sixty. For the collection of the excise assessed under this section the collector shall have all the remedies provided by chapter sixty. The excise assessed shall be due and payable on October first of the year assessed, and if not paid on or before November first of the year of assessment, or within thirty days after notification of said excise if said notice is given after October first, shall bear interest as provided in section fifty-seven of chapter fifty-nine.

The local appropriating authority, as defined in section 21C, may, by a two-thirds vote, seek voter approval to not impose the excise established by this section.

Added by St.1956, c. 400, § 2. Amended by St.1960, c. 130; St.1964, c. 285, § 2; St.1969, c. 310; St.1973, c. 925, § 7; St.1978, c. 359, § 1; St.1978, c. 514, § 77; St.1988, c. 43, § 1; St.1989, c. 444; St.2008, c. 310, § 2, eff. Aug. 14, 2008.

§§ 9, 10. Repealed, 1963, 160, Sec. 12

§ 11. Real estate

Taxes on real estate shall be assessed, in the town where it lies, to the person who is the owner on January first, and the person appearing of record, in the records of the county, or of the district, if such county is divided into districts, where the estate lies, as owner on January first, even though deceased, shall be held to be the true owner thereof; provided, that whenever the commissioner deems it proper he may, in writing, authorize the assessment of taxes upon real estate to the person who is in possession thereof on January first, and such person shall thereupon be held to be the true owner thereof for the purposes of this section; and provided, further, that whenever the commissioner deems it proper he may, in writing, authorize the assessment of taxes upon any present interest in real estate to the owner of such interest on January first, and taxes on such interest may thereupon be assessed to such person; and provided, further, that in cluster developments or planned unit developments, as defined in section nine of chapter forty A, the assessment of taxes on the commonland, so called, including cluster development common land held under a conservation restriction pursuant to section thirty-one of chapter one hundred and eighty-four, the beneficial interest in which is owned by the owners of lots or residential units within the plot, may be included as an additional assessment to each individual lot owner in the cluster if authorized in writing by the commissioner and in such manner as prescribed by him. Real estate held by a religious society as a ministerial fund shall be assessed to its treasurer in the town where the land lies. Buildings erected on land leased by the commonwealth under section twenty-six of chapter seventy-five shall be assessed to the lessees, or their assignees, at the value of said buildings. Except as provided in the three following sections, mortgagors of real estate shall for the purpose of taxation be deemed the owners until the mortgagee takes possession, after which the mortgagee shall be deemed the owner.

Whenever the assessors of any town assess a tax on real estate to a person other than the person appearing of record, in the records of the county, or of the district, if such county is divided into districts, where the estate lies, as owner on January first, such assessors shall, if the tax is a lien upon such real estate under section thirty-seven of chapter sixty, unless the commissioner shall certify that the assessors by reasonable diligence cannot ascertain the name of the person so appearing of record, include in such assessment the name of the person so appearing of record without imposing upon him personal liability for the tax.

Whenever the commissioner deems it proper he may, in writing, authorize the assessment of taxes upon real property to persons unknown, provided that the assessors certify to the commissioner that

they cannot by reasonable diligence ascertain the name of the person appearing of record.

Real estate permanently restricted under section seventeen B of chapter twenty-one, section one hundred and five of chapter one hundred and thirty and section forty A of chapter one hundred and thirty-one shall be assessed as a separate parcel of real estate and real estate under a conservation restriction in perpetuity under section thirty-one of chapter one hundred and eighty-four subject to a written agreement with a city or town shall be assessed as a separate parcel and the city or town acting through its assessor shall be bound by the terms of the written agreement until its expiration. The initial assessment as a separate parcel shall be made on January first of the year next following the conveyance of such permanent restriction.

Amended by St.1933, c. 254, § 29; St.1936, c. 92; St.1939, c. 175; St.1956, c. 397; St.1956, c. 690, § 2; St.1957, c. 418; St.1958, c. 549, § 2; St.1971, c. 286; St.1972, c. 719, § 1; St.1977, c. 422; St.1978, c. 62; St.1989, c. 585.

Historical and Statutory Notes

St.1780, c. 43.
St.1830, c. 151, § 3.
R.S.1836, c. 7, §§ 7, 10, cl. 8.
G.S.1860, c. 11, §§ 8, 13.
St.1881, c. 304, § 3.
P.S.1882, c. 11, §§ 13, 22.
St.1889, c. 84.
R.L.1902, c. 12, §§ 15, 25.
St.1902, c. 113.
St.1909, c. 440, § 2.
St.1909, c. 490, pt. 1, §§ 15, 25.
St.1911, c. 409.
St.1914, c. 198, § 2.
St.1915, c. 237, § 23.

§ 12. Mortgaged real estate

If any person has an interest in real estate, not exempt from taxation under section five, as holder of a duly recorded mortgage given to secure the payment of a fixed and certain sum of money, the amount of his interest as mortgagee shall be assessed as real estate in the town where the land lies; and the mortgagor shall be assessed only for the value of such real estate after deducting the assessed value of the interest therein of such mortgagee. If such estate is situated in two or more towns, the amount of the mortgagee's interest to be assessed in each town shall be proportioned to the assessed value of the mortgaged real estate in the respective towns, deducting therefrom the taxable amount of prior mortgages, if any, thereon.

Historical and Statutory Notes

St.1881, c. 304, § 1.
P.S.1882, c. 11, § 14.
St.1882, c. 175, § 3.
R.L.1902, c. 12, § 16.
St.1909, c. 490, pt. 1, § 16.

§ 12A. Statement of estate liable to taxation

If the holder of such mortgage fails to file in the assessor's office a sworn statement of all his estate liable to taxation under the preceding section, including a statement of the full amount remaining unpaid upon such mortgage and of his interest therein, the amount stated in the mortgage shall be inclusive as to the extent of such interest; but his interest in such real estate shall not be assessed at a greater sum than the fair cash valuation of the land and the structures thereon or affixed thereto; and the amount of a mortgage interest in an estate divided after the creation of such mortgage need not be apportioned upon the several parts of such estate, except as provided in section seventy-eight A. Whenever, in any case of mortgaged real estate, such statement is not brought in, no tax on such real estate for the year then current shall be invalidated for the reason that a mortgagee's interest has not been assessed to him.

Added by St.1979, c. 797, § 13. Amended by St.1980, c. 261, § 14.

§ 12B. Mortgagors and mortgagees deemed joint owners; tax bill

Mortgagors and mortgagees referred to in the two preceding sections shall for the purpose of taxation be deemed joint owners until the mortgagee takes possession; and until such possession is taken by a first mortgagee, an assessor or the collector of taxes, upon application, shall give to any such mortgagee or mortgagor a tax bill showing the whole tax on the mortgaged estate and the amount included in the valuation thereof as the interest of each mortgagee and of the mortgagor respectively. If the first mortgagee is in possession, he shall be deemed sole owner; and any other mortgagee in possession shall be deemed joint owner with prior mortgagees.

Added by St.1979, c. 797, § 13.

§ 12C. Taxes paid by tenant; recovery from landlord

If a tenant paying rent for real estate is taxed therefor he may retain out of his rent the taxes paid by him, or may recover the same in an action

against his landlord, unless there is a different agreement between them.
Added by St.1979, c. 797, § 13.

§ 12D. Assessment against real estate of decedent; liability of heirs and devisees

The undivided real estate of a deceased person may be assessed to his heirs or devisees, without designating any of them by name, until the names of such heirs or devisees appear in the probate court records in the county in which said real estate lies; and each heir or devisee shall be liable for the whole of such tax, and when paid by him he may recover of the other heirs or devisees their respective proportions thereof.
Added by St.1979, c. 797, § 13.

§ 12E. Assessment against real estate of decedent; lien

The real estate of a person deceased, the right or title to which is doubtful or unascertained by reason of litigation concerning the will of the deceased or the validity thereof, may be assessed in general terms to his estate, and said tax shall constitute a lien upon the land so assessed and may be enforced by sale of the same or a part thereof, as provided for enforcing other liens for taxes on real estate.
Added by St.1979, c. 797, § 13.

§ 12F. Real estate unassessed where right or titled unascertained; lien for expenses to determine ownership

Wherever real estate has been unassessed because the right or title thereto has been doubtful or unascertained because of missing records or otherwise, and a municipality has conducted a search and has determined the record ownership of said real estate, the said real estate shall become subject to a lien for the expenditures incurred by said municipality in the determination of said ownership. The assessor of said municipality shall forthwith cause to be recorded in the registry of deeds for the county or district in which the real estate is located a statement containing the name of the owner or owners of said real estate, an adequate description thereof, and the amount of said expenditures incurred, for which amount a lien on said real estate shall become effective as of the time and date of its recording. No such lien shall be effective against a bona fide purchaser or other transferee without notice of such lien. The recording fee for such statement shall be added to and become a part of the expenditures constituting said lien.
Added by St.1979, c. 797, § 13.

§§ 13 to 17A. Repealed, 1978, 580, Sec. 30

§ 18. Personal property; assessment

All taxable personal estate within or without the commonwealth shall be assessed to the owner in the town where he is an inhabitant on January first, except as provided in chapter sixty-three and in the following clauses of this section:

First, All tangible personal property, including that of persons not inhabitants of the commonwealth, except ships and vessels, shall, unless exempted by section five, be taxed to the owner in the town where it is situated on January first. Ships and vessels, except those used in or designed for use in carrying trade or commercial fishing, shall be taxed to the owner as of July first in the town where it is habitually moored or docked, otherwise where it is principally situated during the calendar year.

[Clause Second effective for tax years beginning on or after January 1, 2009. See 2008, 173, Sec. 101.]

Second, Machinery employed in any branch of manufacture or in supplying or distributing water, including machines used or operated under a stipulation providing for the payment of a royalty or compensation in the nature of a royalty for the privilege of using or operating the same, and all tangible personal property within the commonwealth leased for profit, or, in the case of business corporations subject to tax under section 39 of chapter 63, machinery used in the conduct of the business, shall be assessed where such machinery or tangible personal property is situated to the owner or any person having possession of the same on January first.

Second A, For the purposes of this clause the following words shall have the following meanings:—

"Situated", repeated and regular use of a machine or type of machinery in a city or town in the conduct of the corporation's business. If machinery is regularly used in a city or town as of January first, it shall be deemed situated in that city or town regardless of its physical location on January first.

"Fair cash value", the machinery's actual fair cash value or, in the case of machinery which is part of a larger fleet of substantially similar machinery, the average fair cash value of the machines in that portion of the fleet physically located in a city or town during the year.

"Fairly apportioned", allocated so as to reflect only the amount of time during which property was physically located in a city or town, according to records kept by the corporation in the regular course of its business.

[Second paragraph of clause Second A effective for tax years beginning on or after January 1, 2009. See 2008, 173, Sec. 101.]

Any machinery used in the conduct of its business, and owned or in the possession of a business corporation subject to tax under section 39 of chapter 63, which machinery is designed or used for the transportation of persons or goods within the commonwealth or interstate, including but not limited to: aircraft frames, aircraft engines, and aircraft avionics, shall be assessed as provided by this clause.

The assessed value of such machinery shall be its fair cash value fairly apportioned. Such apportionment shall be determined, for each type of machinery used in the city or town, by multiplying the fair cash value of such machinery by a figure representing the percentage of time the machinery or substantially similar machinery was physically located in a city or town during the year. Said figure may be based on one or more representative periods, to be at least one week each, which fairly reflect the typical amount of time each type of machinery is physically located in a city or town during that year.

The commissioner may issue regulations and guidelines for the assessment of such machinery which shall ensure that no tax shall be unfair, unreasonable or a burden on interstate commerce. Said guidelines may classify such machinery according to its type or the nature of its use, determine the basis for depreciation, set a maximum limit on the amount of time any machine or type of machine shall be considered in a city or town, or otherwise regulate the assessment and taxation of such machinery consistent with the purposes of this clause.

The provisions of this clause shall not be applicable to the property of foreign corporations chartered outside of the United States, nor to machinery the assessment of which is specifically provided for elsewhere in the General Laws or which is made exempt from the provisions of this clause by section forty-nine of chapter ninety.

Third, Personal property of deceased persons, before the appointment of an executor or administrator, shall be assessed in general terms to the estate of the deceased, and the executor or administrator subsequently appointed shall be liable for the tax so assessed as though assessed to him.

Fourth, Personal property of joint owners or tenants in common, other than partners, may be assessed to one or more of such owners, and any person so assessed shall be liable for the whole tax.

[Clause Fifth applicable to property taxes assessed for fiscal years beginning on or after July 1, 2009. See 2009, 27, Sec. 149.]

Fifth, Underground conduits, wires and pipes laid in public ways, except such as are owned by a street railway company, and poles, underground conduits and pipes, together with the wires thereon or therein, laid in or erected upon private property or in a railroad location by any corporation, except poles, underground conduits, wires and pipes of a railroad corporation laid in or erected upon the location of such railroad, and except poles, underground conduits, wires and pipes laid in or erected upon any right of way owned by a street railway company, shall be assessed to the owners thereof in the towns where laid or erected. Poles, underground conduits, wires and pipes of telecommunications companies laid in or erected upon public or private ways and property shall be assessed to their owners in the cities or towns where they are laid or erected. For purposes of this clause, telecommunications companies shall include cable television, internet service, telephone service, data service and any other telecommunications service providers.

Sixth, Partners, whether residing in the same or different towns, shall be jointly taxed under their firm name, for all tangible personal property belonging to the partnership, except ships and vessels used in or designed for use in carrying trade or commercial fishing, in the place where such property is situated. Each partner shall be liable for the whole tax.

Seventh, Ships or vessels, other than yachts and other pleasure craft, owned by a partnership, shall be assessed to the several partners in their places of residence, if within the commonwealth, proportionally to their interests therein; but the interests of the several partners residing without the com-

monwealth shall be assessed to the partnership in the place where its business is carried on.

Amended by St.1933, c. 254, § 30; St.1936, c. 362, § 2; St.1978, c. 581, § 4; St.1989, c. 195, § 1; St.2008, c. 173, §§ 7, 8, eff. July 3, 2008; St.2009, c. 27, § 25, eff. Jan. 1, 2009.

Historical and Statutory Notes

St.1821, c. 107, §§ 3, 5.
St.1830, c. 151, § 2.
R.S.1836, c. 7, §§ 9, 10, cls. 1 to 3, 7; § 13.
St.1837, c. 86.
St.1839, c. 139, §§ 1, 2.
St.1848, c. 235.
St.1852, c. 234.
St.1855, c. 106.
St.1857, c. 301, § 1.
St.1859, c. 114.
St.1859, c. 258.
G.S.1860, c. 11, § 12, cls. 1 to 3, 7; §§ 15, 16.
St.1870, c. 328, § 1.
St.1878, c. 189, § 2.
P.S.1882, c. 11, § 20, cls. 1 to 3, 7; §§ 24, 25.
St.1882, c. 165.
St.1887, c. 125.
St.1889, c. 446.
St.1894, c. 304.
St.1894, c. 490.
R.L.1902, c. 12, § 23, cls. 1 to 3, 7, 9; §§ 27, 28.
St.1902, c. 342, § 1.
St.1903, c. 437, § 71.
St.1907, c. 329.
St.1908, c. 193.
St.1909, c. 439.
St.1909, c. 440, § 2.
St.1909, c. 490, pt. 1, §§ 11, 23, cls. 1 to 3, 7, 9, 10; §§ 27, 28.
St.1909, c. 516, § 2.
St.1911, c. 383, § 2.
St.1913, c. 458.
St.1914, c. 198, § 2.
St.1916, c. 271.
St.1918, c. 129, § 1, cls. 1 to 5.
St.1924, c. 321, § 2.
St.1925, c. 64.
St.1928, c. 143, § 2.
St.1929, c. 40, § 1.
St.1930, c. 220, § 12.

§ 19. Mortgaged or pledged personal property; assessment

Personal property mortgaged or pledged shall be assessed to the owner or to the mortgagee or pledgee in actual physical possession thereof on January first.

Amended by St.1933, c. 254, § 31; St.1945, c. 143.

Historical and Statutory Notes

R.S.1836, c. 7, § 11.
G.S.1860, c. 11, § 14.
P.S.1882, c. 11, § 23.
R.L.1902, c. 12, § 26.
St.1909, c. 440, § 2.
St.1909, c. 490, pt. 1, § 26.
St.1914, c. 198, § 2.

§ 20. State treasurer; duties

The state treasurer, not later than August twentieth in each year, shall send formal notice by mail to the assessors and treasurers of the several cities and towns for the payment of charges and assessments under general or special law which may be due and payable to the commonwealth as specifically provided by law or as certified to him by the proper board, department or commission.

Said state treasurer shall reduce the amounts distributable or payable by the commonwealth to cities and towns pursuant to sections eighteen A, eighteen B, eighteen C and eighteen E of chapter fifty-eight by said charges and assessments, and shall make payments to cities and towns in four installments. Said payments shall be made annually, in each fiscal year, on or before September thirtieth, December thirty-first, March thirty-first and June thirtieth. In the event that the charges or assessments exceed the amounts distributable or payable, the treasurers of the affected cities and towns shall pay to the state treasurer any amount owed to the commonwealth pursuant to a schedule established by the commissioner of administration.

If the amount due and payable from any city or town as aforesaid is not paid to the state treasurer within the time specified, he shall notify the treasurer of such delinquent city or town, who shall pay into the treasury of the commonwealth, in addition to the sum assessed, such further sum as would equal one per cent per month during the delinquency from and after the time specified; and if it remains unpaid after the expiration of ten days after the time specified, an information may be filed by the state treasurer in the supreme judicial court or before any justice thereof, against such delinquent city or town; and upon notice to such city or town, and a summary hearing thereon, a warrant of distress may issue against such city or town to enforce the payment of the sum so assessed under such penalties as the court or the justice thereof before whom the hearing is had, shall order. The state treasurer may deduct at any time from any moneys which may be due from the commonwealth to any city or town, the whole or any part of the sum so assessed or any other sum or sums which may be due and payable to the commonwealth from such city or town, with the interest accrued thereon.

Amended by St.1933, c. 254, § 32; St.1936, c. 376, § 1; St.1946, c. 432, § 1; St.1977, c. 888; St.1987, c. 737, § 6.

Historical and Statutory Notes

R.S.1836, c. 7, § 14.
G.S.1860, c. 11, § 17.
St.1867, c. 166.
P.S.1882, c. 11, § 31.
R.L.1902, c. 12, § 34.
St.1909, c. 490, pt. 1, § 34.
St.1910, c. 598, § 6.

§ 20A. Increase in assessments

No county, district, public authority, the commonwealth, or other governmental entity authorized by law to assess costs, charges or fees upon cities and towns, except regional school districts, regional water districts and regional sewerage districts, may increase the total of such costs, charges or fees by more than the sum of: (1) two and one-half per cent of the total of such costs, charges or fees over the preceding fiscal year; and (2) any increases in costs, charges or fees for services customarily provided locally or for services subscribed to at local option.

Added by St.1980, c. 580, § 12. Amended by St.1981, c. 782, § 9; St.1982, c. 550, § 1; St. 2003, c. 26, § 192, eff. July 1, 2003.

§ 20B. Regional veterans' districts, regional water districts or regional sewerage districts; increase in assessments

No regional veterans' district, regional water district or regional sewerage district authorized by law to assess costs, charges or fees upon cities and towns may increase the total of such costs, charges or fees by more than the sum of: (1) two and one-half per cent of the total of such costs, charges or fees over the preceding fiscal year; and (2) any increases in costs, charges or fees for services customarily provided locally or for services subscribed to at local option; provided, however, that such districts may exceed this limitation in the manner provided by this section.

In all but two-member districts, any increase above the limitation set out above shall be approved by a two-thirds vote of the district's governing body and, thereafter, shall require the approval of two-thirds of the local appropriating authorities of the several municipalities.

In a two-member district, any increase above the limitation set out above shall be approved by a two-thirds vote of the district's governing body and, thereafter, shall require the approval of the local appropriating authorities of both member municipalities. In the event both municipalities fail to approve in the manner required, the district's governing body shall convene a special district-wide meeting open to all registered voters in both municipalities at which the increase shall be considered. At such special meeting, the increase shall require the approval of a majority of those present and voting, by a counted vote.

In the event that the increase does not receive the necessary approvals as required by this section, it shall be recommitted to the district's governing body which shall have thirty days to amend and to resubmit said increase for approval in accordance with this section.

Added by St.1982, c. 550, § 1. Amended by St.1988, c. 90.

§ 21. Assessors; duties

The assessors shall assess state and county taxes duly certified to them. The assessors shall also assess as estimated in advance by the commissioner charges and assessments for which the state treasurer will be required under section twenty to send his warrant not later than November first next following the assessment by the assessors. If at the time of fixing the tax rate for a fiscal year the warrant for the state tax, if any, for such year has not been received or the county tax for such year has not been certified, the assessors may nevertheless fix the tax rate for such year and shall in such event assess for such year such state and county taxes as estimated in advance by the commissioner. The commissioner shall notify the assessors of his estimate of such assessments, charges and taxes annually on or before March first. Any balance of such assessments, charges and taxes not so assessed for such year by reason of an underestimate by the commissioner shall be assessed for the next subsequent fiscal year and any excess assessed in accordance with the foregoing provision by reason of an over-estimate by him shall be deducted in determining the amount to be assessed for the next subsequent fiscal year. The assessors shall also assess town taxes voted by their respective towns and all taxes duly voted and certified by fire, water, light and improvement districts therein or certified by the joint committee of a health district formed under section twenty-seven A of chapter one hundred and eleven. Such district taxes shall be subject to the law relative to the assessment and collection of town taxes, so far as applicable. Except as otherwise provided, all taxes shall be assessed as

of January first preceding the fiscal year with respect to which the taxes are assessed.
Amended by St.1933, c. 254, § 33; St.1936, c. 376, § 2; St.1945, c. 624, § 7; St.1946, c. 432, § 2; St.1969, c. 849, § 66B.

Historical and Statutory Notes

St.1785, c. 50, §§ 4, 8.
St.1821, c. 107, § 7.
R.S.1836, c. 7, § 16.
G.S.1860, c. 11, § 18.
St.1870, c. 332, § 2.
P.S.1882, c. 11, § 32.
R.L.1902, c. 12, § 35.
St.1909, c. 440, § 1.
St.1909, c. 490, pt. 1, § 35.
St.1914, c. 198, § 1.
St.1919, c. 319, §§ 1, 2.

§ 21A. Additional compensation of assessors for courses of study

In any city or town which accepts this section, an assessor or assistant assessor who has completed the necessary courses of study and training and has been awarded a certificate by the International Association of Assessing Officers as a certified assessment evaluator or who has been awarded a certificate by the Association of Massachusetts Assessors as a certified Massachusetts assessor shall receive as compensation from such city or town, in addition to the regular compensation paid by such city or town for services in such office, an amount equal to ten per cent of such regular compensation; provided, however, that in no event shall such additional compensation exceed one thousand dollars annually, if such assessor or assistant assessor is employed on a full-time basis, or five hundred dollars, if such assessor or assistant assessor is employed on a part-time basis. An assessor who has been awarded both certificates referred to above shall receive such additional compensation for only one of such certificates. In order to qualify for such additional compensation, an assessor or assistant assessor shall submit proof that he has been awarded either or both of the aforesaid certificates to the mayor or the board of selectmen of such city or town. The additional compensation herein provided shall be prorated for any twelve month period in which an eligible person does not hold the office of assessor or assistant assessor for twelve consecutive months.
Added by St.1971, c. 889.

§ 21A½. Certified assessors; compensation

In any city or town which accepts this section, an assessor or assistant assessor, who has completed the necessary courses of study and training and has been awarded a certificate by the International Association of Assessing Officers as a certified assessment evaluator or who has been awarded a certificate by the Association of Massachusetts Assessors as a certified Massachusetts assessor, shall receive as compensation from such city or town, in addition to the regular compensation paid by such city or town for services in such office, an amount equal to ten per cent of such regular compensation. An assessor who has been awarded both certificates referred to above shall receive such additional compensation for only one of such certificates. In order to qualify for such additional compensation, an assessor or assistant assessor shall submit proof that he has been awarded either or both of the aforesaid certificates to the mayor or the board of selectmen of such city or town. The additional compensation herein provided shall be prorated for any twelve month period in which an eligible person does not hold the office of assessor or assistant assessor for twelve consecutive months. In those cities and towns which accept the provisions of section twenty-one A, this section shall not be applicable.
Added by St.1987, c. 469.

§ 21B. Training programs for assessors

The assessors shall attend such training programs conducted or sponsored by the commissioner under the provisions of section one of chapter fifty-eight as said commissioner shall deem necessary.
Added by St.1971, c. 895, § 2.

§ 21C. Limitations on total taxes assessed; determination by voters

(a) Whenever used in the text of this section, the following words and terms shall have the following meanings:—

"Full and fair cash valuation", the fair cash value of all real estate and personal property as defined in this chapter, as certified by the commissioner, or, if no certification has been made, as last reported by the commissioner to the general court pursuant to section ten C of chapter fifty-eight as updated by the commissioner for any intervening period by an appropriate factor, if any.

"Local appropriating authority", in a town, the board of selectmen; in a city, the council, with the mayor's approval when required by law; in a municipality having a town council form of government, the town council.

"Total taxes assessed", the net amount to be raised by any ad valorem tax levied on the real estate and personal property located within a city or town.

(b) The total taxes assessed within any city or town under the provisions of this chapter shall not exceed two and one-half per cent of the full and fair cash valuation in said city or town in any fiscal year. Any city or town in which total taxes exceed this limit shall be subject to the provisions of paragraph (d).

[There is no paragraph (c).]

(d) Any city or town in which total taxes assessed exceed the limits set forth in paragraph (b) shall for each successive year until the total taxes assessed shall not exceed said limits, reduce the total taxes assessed by not less than fifteen per cent of the total taxes assessed for the year immediately preceding; provided, however, that the reduction pursuant to this paragraph shall not be so great as to require a reduction below the limits set forth in paragraph (b); and provided, further, that said reduction may be adjusted by those amounts approved in accordance with the applicable provisions of paragraph (e).

(e) The local appropriating authority of any city or town which is subject to the provisions of paragraph (d) may, by a two-thirds vote, seek voter approval to assess taxes in excess of the amount allowed pursuant to said paragraph (d) by a specified amount. Any question submitted to the voters shall be worded as follows:—

"Shall the (city/town) of _____ be allowed to assess an additional $_____ in real estate and personal property taxes for the fiscal year beginning July first, nineteen hundred and _____?

YES _____ NO _____".

If the amount specified in such question is not greater than one-half of the reduction required pursuant to said paragraph (d), the proposal shall be deemed approved if a majority of the persons voting thereon shall vote "yes". If the amount specified is greater than one-half of the reduction required pursuant to said paragraph (d), the proposal shall be deemed approved if two-thirds of the persons voting thereon shall vote "yes".

In no event shall the amount specified be greater than the reduction required pursuant to said paragraph (d).

The local appropriating authority may, by a two-thirds vote, submit two questions on the same ballot; provided that only one question shall specify an amount which is greater than one-half of the reduction required pursuant to paragraph (d). If both questions are approved by the required number of voters, then the question which requires a two-thirds vote shall apply.

(f) in any city or town in which the total taxes assessed result in a percentage which is less than or equal to the limits imposed pursuant to paragraph (b), the total taxes assessed for any fiscal year shall not exceed an amount equal to one hundred and two and one-half per cent of the maximum levy limit for the preceding fiscal year as determined by the commissioner of revenue; provided, however, that the total taxes assessed may be further increased by those amounts approved in accordance with the provisions of paragraph (g); and provided further, that the total amount of taxes assessed for the then current fiscal year may be increased by an amount equal to the tax rate for the preceding fiscal year multiplied by the amount of increase in the assessed valuation of any parcel of real, or article of personal property over the assessed valuation of such property during the prior year which shall become subject to taxation for the first time, or taxed as a separate parcel for the first time during such fiscal year, or which has had an increase in its assessed valuation over the prior year's valuation unless such increased assessed valuation is due to revaluation of the entire city or town.

(g) The local appropriating authority of any city or town which is subject to the provisions of paragraph (f) may, by majority vote, seek voter approval to assess taxes in excess of amount allowed pursuant to said paragraph (f) by a specified amount.

Any question submitted to the voters shall be worded as follows:—

"Shall the (city/town) of _____ be allowed to assess an additional $_____ in real estate and personal property taxes for the purposes of (state the purpose(s) for which the monies from this assessment will be used) for the fiscal year beginning July first, nineteen hundred and _____?

YES _____ NO _____"

Said question shall be deemed approved if a majority of the persons voting thereon shall vote "yes".

If a question as aforesaid shall provide for assessing taxes for the purpose of funding a stabilization fund established pursuant to section 5B of chapter 40, the assessors shall in each successive fiscal year assess property taxes for the same purpose in an amount equal to 102.5 per cent of the amount assessed in the next preceding year in which additional taxes were assessed for such purpose, but only if the local appropriating authority votes by a ⅔ vote to appropriate such increased amount in such year for such purpose. The voters of the city or town, by majority vote at a referendum, may alter the purpose of a stabilization fund or authorize the assessment of such additional property taxes for another purpose. In any year in which the local appropriating authority does not vote to appropriate such amount as aforesaid, the total property tax levy for such year shall be reduced by the amount that could otherwise have been assessed, so that such additional taxes may not be assessed for any other purpose. The maximum levy limit under paragraph (f) shall not be affected by any such reduction in the levy for such year.

(h) In a city or town, if a majority of the local appropriating authority or the people by local initiative procedure shall so require, there shall be a special election called in order to submit a question to the voters as to whether said city or town should be required to assess taxes by a specified amount below that amount allowed pursuant to this section. The question submitted to the voters shall be worded as follows:—

"Shall the (city/town) of _____ be required to reduce the amount of real estate and personal property taxes to be assessed for the fiscal year beginning July first, nineteen hundred and _____ by an amount equal to $_____?

YES_____ NO_____".

If a majority of the persons voting on the question shall vote "yes", the limit on total taxes assessed shall be decreased to the percentage so voted for that fiscal year.

(i) With regard to the referenda procedures set out in this section the local appropriating authority may direct that the questions be placed upon the official ballot at a regular city or town election or at a special election which the local appropriating authority may call at any time. The local appropriating authority may also direct that not more than three such questions be placed upon the official ballots for use in the city or town at a biennial state election, by filing with the state secretary not later than the first Wednesday of August preceding that election a copy of its vote attested by the city or town clerk.

(i½) The local appropriating authority of any city or town may, by a two-thirds vote, seek voter approval to assess taxes in excess of the levy limitation for certain capital outlay expenditures. Amounts for such capital outlay expenditures or for the city's or town's apportioned share for certain capital outlay expenditures by a regional governmental unit shall be assessed only after approval by a separate vote of the people taken at a regular or special election held before the setting of the annual tax rate; provided, however, that the question submitted shall be worded as follows: "Shall the (city/town) of _____ be allowed to assess an additional $_____ in real estate and personal property taxes for the purposes of (state the purpose(s) for which the monies from this assessment will be used) for the fiscal year beginning July first, two thousand and _____?

Yes_____ No_____";

and provided, further, that said question shall be deemed approved if a majority of the persons voting thereon shall vote "yes".

Capital outlay expenditures may be authorized for any municipal purpose for which the city or town would be authorized to borrow money under section seven or eight of chapter forty-four.

(j) The local appropriating authority of any city or town may, by a two-thirds vote, seek voter approval at a regular or special election to assess taxes in excess of the amount allowed pursuant to this section for the payment of principal and interest on bonds, notes or certificates of indebtedness, excluding tax revenue anticipation notes, issued by the city or town and for the city's or town's apportioned share of the principal and interest on such bonds or notes issued by a regional governmental unit which were outstanding as of November fourth, nineteen hundred and eighty; provided, however, that the question submitted shall be as follows:—

"Shall the (city/town) of _____ be allowed to exempt the total amounts required to pay for bonded indebtedness incurred prior to the passage of proposition two and one-half, so-called, from the (city's/town's) limit?

Yes_____ No_____";

and provided, further, that said question shall be deemed approved if a majority of the persons voting thereon shall vote "yes".

(k) The local appropriating authority of any city or town may, by two-thirds vote, seek voter approval at a regular or special election to assess taxes in excess of the amount allowed pursuant to this section for the payment of principal and interest on bonds, notes or certificates of indebtedness, excluding tax revenue anticipation notes, issued by the city or town and for the city's or town's apportioned share of the principal and interest on such bonds or notes issued by a regional governmental unit which were not outstanding as of November fourth, nineteen hundred and eighty; provided, however, that the question submitted shall be as follows:—

"Shall the (city/town) of _____ be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to (state the purpose or purposes for which the monies from the local issue will be used)?

Yes_____ No_____";

and provided, further, that said question shall be deemed approved if a majority of the persons voting thereon shall vote "yes".

(*l*) Amounts exempted from the tax limit under paragraph (i½), (j), (k) or (n) shall not be included in calculating the "total taxes assessed" in paragraph (a) or the maximum levy limit in paragraph (f).

(m) A town may appropriate from the tax levy, from available funds, or from borrowing, contingent on the passage of a ballot question under paragraph (g), (i½) or (k), but: (1) the statement of the purpose of the appropriation shall be substantially the same as the statement of purpose in the ballot question; (2) the appropriation vote shall not be deemed to take effect until the approval of the ballot question; (3) no election at which the question appears on the ballot shall take place later than the September 15 following the date of an appropriation vote adopted at an annual town meeting, or 90 days after the date of the close of any other town meeting at which an appropriation vote was adopted; and (4) after a contingent appropriation from the tax levy, a tax rate for a town shall not be submitted for certification by the commissioner under section 23 until after a ballot question under paragraph (g), (i½) or (k) has been voted upon, or until the expiration of the time for holding an election at which the question appears on the ballot, whichever period is shorter.

(n) The local appropriating authority may, by accepting this paragraph, provide that taxes may thereafter be assessed in excess of the amount otherwise allowed by this section, solely for payment, in whole or in part, of water or sewer debt service charges, including debt service charges of an independent commission, authority or district and as part of any wholesale water and sewer charges, that the board or officer responsible for determining the water and sewer charges certifies were not in fiscal year nineteen hundred and ninety-three paid by local taxes; provided, however, that water and sewer charges shall be reduced by the amount of any such aggregate additional taxes assessed; and provided, further, that said additional taxes may be assessed on only residential real property as defined in section two A, notwithstanding the failure of the city or town to adopt a residential factor pursuant to section fifty-six of chapter forty, but subject to any subsequent adoption of such residential factor allowed by said section fifty-six; and provided, further, that if said additional taxes are assessed only on residential real property, aggregate residential water and sewer charges shall be reduced by the amount of any such additional taxes assessed. In the case of a city or town whose water and sewer service is provided by an independent commission, authority or district which separately bills water and sewer users, said commission, authority or district may enter into an agreement with said city or town to effectuate the purposes of this paragraph, provided, however, that immediately upon collection of all such taxes assessed for payment of such residential water and sewer debt service charges of such commission, authority or district, the treasurer or collector of taxes of such city or town shall, without appropriation by such city or town, pay over the taxes so collected to such commission, authority or district less any amounts agreed upon to provide reasonable compensation to the city or town for costs incurred in carrying out the agreement. Notwithstanding the provisions of chapter twenty-nine C, chapter two hundred and seventy-five of the acts of nineteen hundred and eighty-nine, or any other general or special law to the contrary, any city or town which accepts this paragraph or any independent authority, commission or district which provides water or sewer services to such city or town shall remain eligible to receive loans and grants for

water pollution abatement projects or safe drinking water projects.

Added by St.1980, c. 580, § 1. Amended by St.1981, c. 782, § 10; St.1983, c. 641, §§ 1 to 4; St.1984, c. 187; St.1986, c. 562, §§ 1, 2; St.1987, c. 229, §§ 1, 2; St.1988, c. 276, § 1; St.1989, c. 634; St.1991, c. 6, § 20; St.1991, c. 138, § 243; St.1992, c. 286, §§ 132, 133; St.1993, c. 110, §§ 113, 114; St.1996, c. 454, § 26; St.2000, c. 70; St.2003, c. 46, § 50, eff. July 31, 2003; St.2007, c. 91, §§ 1, 2, eff. Aug. 14, 2007.

§ 21D. Calculation of total limit; adjustment of limit; certification of amount of limit; approval

The commissioner of revenue shall calculate the total limit applicable pursuant to sections twenty A and twenty-one C and section thirty-four of chapter seventy-one; provided, however, that he may adjust any such limit upon written application and pursuant to written guidelines issued by him in order to counterbalance the effects of extraordinary, non-recurring events which occurred during the base year, which were not within the purview of normal municipal financial practices, and would otherwise cause a limit to be set which would be inconsistent with that intended by said sections; and provided, further, that any such adjustment shall be explained in detail and in writing.

For the purposes of this section, the ordinary use of free cash to reduce the gross amount of revenue to be raised shall be considered as within the purview of normal municipal practices. The commissioner may require the presentation of such books, records or other information by any official of the commonwealth or any official of a city, town, district, county, governing body or regional governmental unit as he deems necessary. He shall certify the amount of each limit to the proper governing body or local appropriating authority. If any such limit is increased or decreased in accordance with the provisions of this section, the commissioner shall redetermine the limit accordingly and shall forthwith certify such increased or decreased limit to the proper governing body or local appropriating authority.

No tax rate shall be fixed in any city or town until such rate has been approved by the commissioner of revenue, and the commissioner shall not approve a rate for any city or town which fails to report any increase in assessed valuation as described in paragraph (f) of section twenty-one C or which would allow the amount of property taxes levied to exceed the limit or adjusted limit determined by said commissioner.

Added by St.1981, c. 782, § 11. Amended by St.1988, c. 276, § 2.

§ 22. Repealed, 1925, 343, Sec. 9

§ 23. Annual assessment; amount; deductions; approval

The assessors shall annually assess taxes to an amount not less than the aggregate of all amounts appropriated, granted or lawfully expended by their respective towns since the last preceding annual assessment and not provided for therein, of all amounts required by law to be raised by taxation by said towns during said year, of all debt and interest charges matured and maturing during the next fiscal year and not otherwise provided for, of all amounts necessary to satisfy final judgments against said towns, and of all abatements granted on account of the tax assessment of any year in excess of the overlay of that year and not otherwise provided for or any such deficits resulting from section fifty-three E of chapter forty-four; but such assessment shall not include liabilities for the payment of which towns have lawfully voted to contract debts. Any estimate of interest charges attributable to variable interest rates on obligations issued pursuant to section twenty-two A of chapter forty-four shall be subject to the approval of the commissioner. The assessors shall deduct from the amount required to be assessed (a) the amount of all estimated receipts of their respective towns lawfully applicable to the payment of the expenditures of the next fiscal year, excluding sums to be received from the commonwealth or county for highway purposes, other than funds required to be distributed under section eighteen B of chapter fifty-eight, and excluding estimated receipts from loans and taxes, but including estimated receipts from the excise levied under chapter sixty A and receipts estimated by the commissioner under section twenty-five A of chapter fifty-eight, (b) the amount of all appropriations voted from available funds for the purpose of deduction, and (c) the amount of all other appropriations voted from available funds. Deductions made by the assessors under any provision of this section shall not be subject to the approval of the commissioner; provided, however, that deductions made under clause (a) on account of estimated receipts, other than those estimated by the commissioner, shall not exceed the aggregate amount of actual receipts

received during the preceding fiscal year from the same sources, except with the written approval of the commissioner; and provided, further, that deductions made under clauses (b) and (c) shall not exceed the sums certified to the assessors and the commissioner by the director of accounts, after such examination of the accounts of the town as he may deem proper, as the amounts of available funds on hand on the preceding July the first with such additional funds as are hereinafter authorized not otherwise appropriated. Said director shall promulgate and from time to time revise rules and regulations for determining the available funds of a city or town in accordance with established accounting practices of said bureau of accounts. This section shall not be construed to require any approval for the use, application, transfer, appropriation or expenditure of any funds or accounts provision for which use, application, transfer, appropriation or expenditure is made under any other general or special law, beyond such approval or approvals as are required by such other general or special law.

In determining the amount of available funds to be deducted under the provisions of clauses (b) and (c), such available funds shall be the amount certified by the director of accounts as available on July the first next preceding the date of the appropriation, reduced by the amount of all intervening appropriations from available funds, and increased by the total of the proceeds from the sale of tax title possessions and the receipts from tax title redemptions, in addition to the real and personal property taxes of prior fiscal years, and such other amounts as the director may authorize, collected between said July first and a date which shall in no event be later than March thirty-first; provided, however, that no increases to the amount of certified available funds shall be allowed unless such increases have received the written approval of the director prior to the appropriation of such amounts. Such amounts of available funds so certified by the director of accounts as available on the July first immediately preceding shall be reported by the town accountant to the board of selectmen, or by the city auditor to the mayor or city manager and to the city council or board of aldermen, and shall be subject to appropriation.

To the extent that appropriations for programs provided for under chapter seventy-one B have been made without taking into account any reimbursement to which the city or town is entitled during the fiscal year under section thirteen of said chapter seventy-one B, the amount of such reimbursement, but not in excess of such appropriations, shall be included with other estimated receipts by the board of assessors of every city or town when compiling the local tax rate under this section. Such board of assessors shall show as an offset when compiling such rate the amount which represents the excess of such reimbursement over such appropriations.

The auditor or similar accounting officer in each city or town shall certify as soon as may be to the board of assessors the total of the proceeds from the sale of tax title possessions and receipts from tax title redemptions, in addition to the total real and personal taxes of prior years collected from July the first of the current fiscal year up to and including March the thirty-first of the same year.

If, prior to June first the assessors of any city except Boston shall not have received from the city clerk a certificate under section fifteen A of chapter forty-one of the appropriations voted for the annual budget for the next fiscal year and if it appears to them, after inquiry of the city clerk, that such appropriations have not been voted, they shall forthwith assess a tax for said year in accordance with the provisions of this section, except that, in determining the amount of the tax to be assessed, there shall be considered as having been appropriated for the annual budget for said year an amount equal to the aggregate appropriations voted for the annual budget for the then current fiscal year.

Notwithstanding the provisions of any general or special law, the provisions of this section, so far as apt, shall apply to fire, water and improvement districts.

No city, town or district tax rate for any fiscal year shall be fixed by the assessors until such rate has been approved by the commissioner, and a rate shall not be approved until the commissioner determines that the deductions under this section and the overlay addition under section twenty-five are in full compliance of law and are reasonable in amount. No city, town or district tax rate for any fiscal year shall be changed after it has been approved by the commissioner and returned to the assessors.

Amended by St.1938, c. 175, § 2; St.1948, c. 576; St.1949, c. 104, § 1; St.1951, c. 798, § 7; St.1953, c. 654, § 29; St.1955, c. 143; St.1955, c. 202, § 1; St.1963, c. 160, § 13; St.1969, c. 849, § 67; St.1971, c. 563; St.1971, c. 766, § 20; St.1973, c. 52, § 5; St.1974, c. 80; St.1975, c. 43; St.1975, c. 375, § 3; St.1976, c. 393; St.1978, c. 514, § 78; St.1980, c. 413, § 1; St.1981, c. 46, § 1; St.1981, c. 339, § 2; St.1983, c. 641, § 5; St.1985, c. 571, § 2; St.1986, c. 356; St.1988, c. 73.

Historical and Statutory Notes

St.1875, c. 209, § 1.
P.S.1882, c. 11, § 34.
R.L.1902, c. 12, § 37.
St.1909, c. 490, pt. 1, § 37.
St.1916, c. 269, § 24.
St.1918, c. 28.
St.1921, c. 348.
St.1928, c. 379, § 5.
St.1931, c. 428, § 3.

§ 23A. Notice to municipal finance officers

The assessors, as soon as the tax rates are fixed for a fiscal year, shall notify the auditor or similar officer in cities and towns, the town accountant, if any, otherwise the town treasurer, of the amount to be raised for state, county, and city or town purposes, and for overlay, specifying the amounts, as determined by percentages provided to them by section fifty-six of chapter forty, if applicable, to be levied on each class of real and personal property, and to accrue from estimated receipts.

Amended by St.1963, c. 160, § 14; St.1969, c. 849, § 67A; St.1971, c. 766, § 21; St.1979, c. 797, § 14.

Historical and Statutory Notes

St.1922, c. 118.

§ 23B. Notice of abatements

The assessors shall, as often as once a month, notify the auditor or similar officer in cities and towns, the town accountant, if any, otherwise the town treasurer, of the amounts of abatements of taxes.

Amended by St.1963, c. 160, § 15.

Historical and Statutory Notes

St.1922, c. 118.

§ 23C. Repealed, 1990, 280, Sec. 1

§ 23D. Notice of preliminary tax

Notwithstanding the provisions of any general or special law to the contrary, a city or town is hereby authorized to issue a notice of preliminary tax in any fiscal year, with the prior written approval of the commissioner of revenue for each fiscal year, and require the payment of the preliminary tax, which shall in no event exceed fifty percent of one hundred and two and one-half percent of the tax payable during the preceding fiscal year and of the amount by which such tax would have increased if any referendum question submitted to the voters under the provisions of paragraph (g), (i½), (j) or (k) of section twenty-one C and approved for the fiscal year had been approved for the preceding fiscal year; provided, however, that the board of assessors in any city or town which seeks to issue a notice of preliminary tax shall submit to the commissioner all information required to set the tax rate pursuant to section twenty-three, except the assessed valuation of all real and personal property subject to taxation for the current fiscal year, and any other information as may be required for purposes of the aforementioned approval; and provided, further, that in a city or town undertaking a general revaluation of its property under a program approved by the commissioner for completion and implementation for the fiscal year, the approval shall not be granted unless the commissioner is satisfied that full and fair valuations shall be established prior to February first of the current fiscal year for certification under subsection (c) of section two A. The assessors of such city or town shall establish the tax rate for the fiscal year no later than April first. In no event shall the net amount of revenue to be raised by taxation, as submitted to the commissioner pursuant to the approval required under this section, be exceeded, except to the extent that additional new growth, as certified by the commissioner pursuant to paragraph (f) of section twenty-one C, exceeds the prior approved amount and a referendum question submitted to the voters under the provisions of said paragraph (g), (i½), (j) or (k) has been approved. The actual tax bill issued upon the establishment of the tax rate for the fiscal year, after credit is given for the preliminary tax payment previously made, shall be payable on or before May first of the fiscal year without payment of interest.

In a city or town which seeks to issue a notice of preliminary tax pursuant to this section, the board of assessors must vote to seek approval to issue a notice of preliminary tax no later than August fifteenth of the current fiscal year; provided, however, that the notice of preliminary tax must be issued no later than October first of the current fiscal year; and provided, further, that the board of assessors shall inform the selectmen, town council or city council, and the mayor, immediately of its vote. Said dates may be extended for a city or town by the commissioner only if he finds extraordinary circumstances have caused delay in meeting such dates.

All provisions of law regarding the procedures for issuing, mailing and collecting tax assessments upon real and personal property and betterment assessments shall be applicable to the notice of preliminary tax provided hereunder, including the payment of interest under section fifty-seven. To

the extent that any rights or remedies under law accrue from the date that the tax bill is issued, only the tax bill issued upon the establishment of the tax rate for the current fiscal year shall govern such rights and remedies. The provisions of section twenty-one C shall apply to the tax rate established by the city or town for the current fiscal year.

Notwithstanding the provisions of the first paragraph, a city or town which seeks to issue a notice of preliminary tax for any fiscal year may, with the prior written approval of the commissioner, require the payment of a preliminary tax in excess of fifty percent of the tax payable during the preceding fiscal year, to the extent that such excess represents one-half of the amount of tax accruing as a result of the loss of exemption from tax that had been granted in the preceding fiscal year, improvements to the parcel, or the parcel being taxed as a separate parcel for the first time. A city or town is further authorized under this paragraph, with the prior written approval of the commissioner, to issue a notice of preliminary tax for any property which becomes subject to taxation for the first time in the current fiscal year.

The assessors may, on application or of their own motion, abate so much of the preliminary tax as remains unpaid that is in excess of the property owner's proportional share.

Notwithstanding the provisions of any general or special law to the contrary, the assessors of any city or town which issues a notice of preliminary tax may add any betterment assessment or apportionment thereof, water rate, annual sewer use charge and any other charge placed on the annual tax bill to the preliminary tax on the property to which it relates and of the amount by which such tax would have increased if any referendum question submitted to the voters under the provisions of said paragraph (g), (i½), (j) or (k) and approved for the fiscal year had been approved for the preceding fiscal year and such amount shall become part of the preliminary tax.

Added by St.1987, c. 463, § 1. Amended by St.1990, c. 297, §§ 1, 2; St.1996, c. 284, §§ 1 to 4.

§ 24. Railroad subscriptions; interest on debts

The assessors of a town owing debts incurred to obtain funds for subscriptions for the capital stock and securities of a railroad corporation shall annually assess, in addition to the other amounts required by law, an amount sufficient to pay the excess of such interest payable by such town over any income received from such stock or securities.

Historical and Statutory Notes

St.1876, c. 133, § 3.
P.S.1882, c. 11, § 35.
R.L.1902, c. 12, § 38.
St.1909, c. 490, pt. 1, § 38.

§ 25. Additional assessments

The assessors in any city or town, may add to the amount to be assessed such reasonable amount as the commissioner may approve although the limit of taxation as fixed in any city may by such overlay be exceeded, such amount to be used only for avoiding fractional divisions of the amount to be assessed in the apportionment thereof and for abatements granted on account of property assessed for the fiscal year for which the overlay is made or of taxes in the warrant of which the overlay is a part, but any balance in the overlay account, in excess of the amount of the warrant remaining to be collected or abated, as certified by the board of assessors, shall be transferred by the board of assessors upon their own initiative or within ten days of a written request by the chief executive officer, with written notice to the chief executive officer, to a reserve fund to be appropriated for any lawful purpose; any balance in said reserve fund at the end of the fiscal year shall be closed out to surplus revenue. This section shall apply to fire, water and improvement districts. Amended by St.1949, c. 104, § 2; St.1950, c. 257; St.1953, c. 654, § 30; St.1963, c. 160, § 16; St.1969, c. 849, § 67B; St.1971, c. 766, § 21; St.1978, c. 514, § 79; St.1985, c. 156; St.1986, c. 357; St.1987, c. 712, § 2; St.2003, c. 46, § 51, eff. July 31, 2003.

Historical and Statutory Notes

St.1785, c. 50, § 11.
St.1828, c. 143, § 4.
R.S.1836, c. 7, § 28.
G.S.1860, c. 11, § 32.
P.S.1882, c. 11, § 49.
St.1887, c. 226.
St.1893, c. 445.
R.L.1902, c. 12, § 55.
St.1909, c. 490, pt. 1, § 54.
St.1913, c. 649, § 1.

§ 26. Number of assessments

The assessors may include state, county, city and town taxes, or any two of them, in the same assessment.

Historical and Statutory Notes

St.1785, c. 50, § 14.
St.1823, c 138, § 2.
R.S.1836, c. 7, § 25.
G.S.1860, c. 11, § 29.

P.S.1882, c. 11, § 46.
R.L.1902, c. 12, § 52.
St.1909, c. 490, pt. 1, § 51.

§ 27. Assessors' neglect to assess

If assessors neglect to assess a state, county, city, town or district tax required by law, the commissioner shall forthwith appoint other persons in accordance with section twenty-seven of chapter forty-one.

Amended by St.1936, c. 118, § 2.

Historical and Statutory Notes

St.1785, c. 50, § 4.
R.S.1836, c. 7, §§ 17, 18.
G.S.1860, c. 11, § 19.
P.S.1882, c. 11, § 36.
R.L.1902, c. 12, § 39.
St.1909, c. 490, pt. 1, § 39.

§ 28. Unpaid taxes; collection

If a state or county tax is not assessed, and paid by the town, within the time prescribed, and remains unpaid at the expiration of five months after the receipt of a warrant from the state treasurer or of a certificate from the county commissioners requiring its assessment, the amount of the tax may be recovered of the town in contract by the state treasurer or the treasurer of the county respectively.

Historical and Statutory Notes

St.1831, c. 64, §§ 2, 3.
R.S.1836, c. 8, § 37.
G.S.1860, c. 11, § 20.
P.S.1882, c. 11, § 37.
R.L.1902, c. 12, § 40.
St.1909, c. 490, pt. 1, § 40.
St.1918, c. 257, § 140.
St.1919, c. 5.
St.1920, c. 2.

§ 29. Notice of assessments; lists

Assessors before making an assessment shall give seasonable notice thereof to all persons subject to taxation in their respective towns. Such notice shall be posted in one or more public places in each town, or shall be given in some other sufficient manner, and shall require the said persons to bring into the assessors, before a date therein specified, in case of residents a true list, containing the items required by the commissioner in the form prescribed by him under section five of chapter fifty-eight of all their personal estate not exempt from taxation, except intangible property the income of which is included in a return filed the same year in accordance with sections twenty-two to twenty-five, inclusive, of chapter sixty-two, and in case of non-residents and foreign corporations such a true list of all their personal estate in that town not exempt from taxation, and may or may not require such list to include their real estate subject to taxation in that town. It shall also require all persons, except corporations making returns to the commissioner of insurance as required by section thirty-eight of chapter one hundred and seventy-six, to bring in to the assessors before a date therein specified, which shall not be later than March first following, unless the assessors for cause shown extend the time to a reasonable later time but in no event later than the last day for filing an application for abatement of the tax for the fiscal year to which the filing relates, true lists, similarly itemized, of all real and personal estate held by them respectively for literary, educational, temperance, benevolent, charitable or scientific purposes on January first preceding, or at the election of any such corporation on the last day of its fiscal year preceding said January first, together with such information as may be required to comply with regulations promulgated by the commission pursuant to section three of chapter fifty-eight and the amount of receipts and expenditures for said purposes during the year together with copies of federal tax returns containing unrelated business income taxable under section five hundred and eleven of the Internal Revenue Code.[1] The assessors may require from any person claiming under the Seventeenth, Eighteenth or Twenty-second clause of section five an exemption from taxation, a full list of all such person's taxable property, both real and personal.

Amended by St.1933, c. 254, § 34; St.1963, c. 160, §§ 17, 18; St. 1977, c. 992, § 4; St.1989, c. 397, § 2; St.2010, c. 188, § 44, eff. July 27, 2010.

[1] 26 U.S.C.A. § 511.

Historical and Statutory Notes

St.1785, c. 50, § 9.
R.S.1836, c. 7, § 19.
G.S.1860, c. 11, § 22.
St.1877, c. 160, § 1.
P.S.1882, c. 11, § 38.
St.1882, c. 175, § 2.
St.1882, c. 217, §§ 1, 4.
St.1888, c. 323.
R.L.1902, c. 12, § 41.
St.1903, c. 157.
St.1909, c. 440, §§ 2, 3.
St.1909, c. 490, pt. 1, § 41.
St.1914, c. 198, § 5.
St.1918, c. 257, § 36.
St.1919, c. 5.
St.1920, c. 2.
St.1931, c. 150, § 1.

§ 30. Blank lists

The assessors shall furnish a blank list prescribed by the commissioner under section five of chapter fifty-eight to any person liable to taxation.

Historical and Statutory Notes

St.1882, c. 217, § 3.
St.1894, c. 294.
R.L.1902, c. 12, § 42.
St.1909, c. 490, pt. 1, § 42.
St.1909, c. 515.

§ 31. Verification of lists; oaths

The assessors shall in all cases require a person bringing in a list to make oath that it is true. The oath may be administered by any of the assessors or by their secretary or head clerk, or by any notary public, whose jurat shall be duly authenticated by his seal, or, in this commonwealth, by a justice of the peace. So much of this section as relates to administering the oath shall not apply to Boston.

Historical and Statutory Notes

St.1785, c. 50, § 9.
R.S.1836, c. 7, § 20.
G.S.1860, c. 11, § 23.
P.S.1882, c. 11, § 39.
St.1891, c. 381.
R.L.1902, c. 12, § 43.
St.1909, c. 490, pt. 1, § 43.
St.1916, c. 130, § 1.
St.1916, c. 294.

§ 31A. Examination of records to verify completeness and accuracy of accounting of taxable personal property required to be filed under Sec. 29

For the purpose of verifying that a person required to file a true list of taxable personal property under section 29 has made a complete and accurate accounting of that property, the assessors may at any time within 3 years after the date the list was due, or within 3 years after the date the list was filed, whichever is later, examine the books, papers, records and other data of the person required to file the list. The assessors may compel production of books, papers, records and other data of the person through issuance of a summons served in the same manner as summonses for witnesses in criminal cases issued on behalf of the commonwealth, and all provisions of law relative to summonses in such cases shall, so far as applicable, apply to summonses issued under this section. A justice of the supreme judicial court or of the superior court may, upon the application of the assessors, compel the production of books, papers, records and other data in the same manner and to the same extent as before those courts.

Added by St.2010, c. 188, § 45, eff. July 27, 2010.

§ 32. Inspection of lists

Lists filed under section 29 and books, papers, records and other data obtained under section 31A shall be open to the inspection of the assessors, the commissioner, the deputies, clerks and assistants of either the assessors or the commissioner and any designated private auditor of the commissioner or the assessors as may have occasion to inspect the lists, books, papers, records and other data in the performance of their official, contractual or designated duties, but so much of the lists, books, papers, records and other data as shows the details of the personal estate shall not be open to any other person except by order of a court. For purposes of this section, a "designated private auditor" shall be an individual, corporation or other legal entity selected by the commissioner or a city or town to value personal property or perform an audit which includes the assessing department of a city or town under any legal authority, including the examination of records under said section 31A, an audit under sections 40 or 42A of chapter 44 or an investigation under section 46A of said chapter 44 but only if the individual, corporation or other legal entity shall be compensated for the audit work pursuant to an arrangement under which neither the payment nor the amount of their fees and expenses for the work are contingent on either the results of the audit or whether the results withstand any appeal by a taxpayer. The lists shall be preserved by the assessors until the commissioner orders them destroyed.

Amended by St.2010, c. 188, § 46, eff. July 27, 2010.

Historical and Statutory Notes

St.1898, c. 507, § 1.
R.L.1902, c. 12, § 44.
St.1909, c. 490, pt. 1, § 44.

§ 33. Storage warehouses; information regarding customers

[Text of section effective for tax years beginning on or after January 1, 2009. See 2008, 173, Sec. 101.]

All persons engaged in the business of storing or keeping merchandise in storage warehouses shall, within ten days after request therefor by the assessors of the town where said property is so stored or kept, permit said assessors to copy from their records a list of the names and addresses of all per-

sons who appear, on January first in such year, to have any such property stored or kept in any such warehouse, except business corporations subject to tax under section 39 of chapter 63; but such persons shall not be required to furnish lists of persons having property stored in warehouses which is composed of imported goods in the original packages owned by the importer, or of goods that have been received for export trade or of property which is deemed to be in transit under section two. Failure to comply with this section shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than ninety days.

Amended by St.1933, c. 254, § 35; St.1954, c. 459, § 2; St.2008, c. 173, § 9, eff. July 3, 2008.

Historical and Statutory Notes

St.1912, c. 621.

§ 34. Mortgagors and mortgagees; statements

A mortgagor or mortgagee of real estate may bring in to the assessors of the town where it lies, within the time prescribed by the notice under section twenty-nine, a sworn statement of the amount secured thereon or on each separate parcel thereof, with the name and residence of every holder of an interest therein as mortgagor or mortgagee. If such property is situated in two or more places, or if a recorded mortgage includes two or more estates or parts of an estate as security for one sum, such statement shall include an estimate of the interest of the mortgagee in each estate or part thereof. The assessors shall, from such statement or otherwise, ascertain the proportionate interests of the mortgagor or mortgagee respectively in said estates, and shall assess the same accordingly. If, in any year, such statement is not brought in, the tax for that year on such real estate shall not be invalid merely for the reason that the interest of the mortgagee therein has not been assessed to him.

Historical and Statutory Notes

St.1882, c. 175, § 1.
R.L.1902, c. 12, § 45.
St.1909, c. 490, pt. 1, § 45.

§ 35. Repealed, 1989, 718, Sec. 4

Historical and Statutory Notes

St.1785, c. 50, § 9.
R.S.1836, c. 7, § 22.
G.S.1860, c. 11, § 25.
P.S.1882, c. 11, § 40.
R.L.1902, c. 12, § 46.
St.1909, c. 490, pt. 1, § 46.

§ 36. Failure to furnish lists; estimating value

Assessors shall ascertain as nearly as possible the particulars of the personal estate, and of the real estate in possession or occupation, as owner or otherwise, of any person not bringing in such list, and shall estimate its just value, according to their best information and belief.

Historical and Statutory Notes

St.1785, c. 50, § 1.
R.S.1836, c. 7, § 23.
G.S.1860, c. 11, § 27.
P.S.1882, c. 11, § 41.
R.L.1902, c. 12, § 47.
St.1909, c. 409, pt. 1, § 47.

§ 37. Conclusiveness of estimate

Such estimate shall be entered in the valuation book, and, except as provided in section sixty-one, shall be conclusive upon any person not seasonably bringing in such list, unless he shows a reasonable excuse for the omission.

Historical and Statutory Notes

St.1785, c. 50, § 9.
R.S.1836, c. 7, § 24.
G.S.1860, c. 11, § 28.
P.S.1882, c. 11, § 42.
R.L.1902, c. 12, § 48.
St.1909, c. 490, pt. 1, § 48.

§ 38. Fair cash valuation; classification of assessed valuation; taxable valuation

The assessors of each city and town shall at the time appointed therefor make a fair cash valuation of all the estate, real and personal, subject to taxation therein, and such determination shall be the assessed valuation of such estate. In cities, the assessors may, in any year, divide the city into convenient assessment districts.

The assessed valuation of real property subject to taxation under this chapter shall be classified as follows:—

Class one, residential;

Class two, open;

Class three, commercial, and

Class four, industrial.

The resulting amount shall be the taxable valuation of each class of property to which the assessors shall apply the tax rates applicable to each class as determined under section twenty-three A of chapter fifty-nine of the city or town, to determine the tax due and payable on such property.

Amended by St.1975, c. 853; St.1978, c. 514, § 80; St.1978, c. 576, § 1; St.1979, c. 797, § 15.

Historical and Statutory Notes

St.1785, c. 50, § 1.
R.S.1836, c. 7, § 24.
St.1853, c. 319, § 1.
G.S.1860, c. 11, § 24.
P.S.1882, c. 11, § 45.
St.1889, c. 115.
R.L.1902, c. 12, § 51.
St.1909, c. 490, pt. 1, § 50.
St.1919, c. 51.

§ 38A. Pipelines; valuation; exceptions

Every person, other than a gas or electric company as defined in section one of chapter one hundred and sixty-four, owning a pipeline used for transmitting for a distance of twenty-five miles or more natural gas or petroleum or the products or by-products of either, shall, on or before January thirty-first in each year, make a return to the commissioner signed and sworn to by such person, which shall be in such form and detail as the commissioner shall prescribe, and shall contain all information which he shall consider necessary to enable him to value such pipeline in each city or town as of January first of such year. Property returned to the commissioner under this section need not be included in the list required to be filed by such person under section twenty-nine; but the return made to the commissioner shall be open to inspection by the board of assessors of every city and town where such pipeline is subject to taxation. Failure to make the return required by this section shall bar such owner from any appeal of the commissioner's determination of value under this section, unless such owner was unable to comply with such request for reasons beyond such owner's control. If any owner in a return made under this section makes any statement which he knows to be false in a material particular, such false statement shall bar such person from any appeal under this section. If any such owner shall in any year fail to make the return required by this section, the commissioner shall estimate the value of the property, according to his best information and belief.

On or before June fifteenth in each year, the commissioner shall determine and certify to the owner of such pipeline and to the board of assessors of every city or town where such pipeline is subject to taxation, the valuation as of January first in such year of such pipeline in said city or town. Every owner and board of assessors to whom such valuation shall have been so certified may, on or before July fifteenth then next ensuing, appeal to the appellate tax board from such valuation. Every such appeal shall relate to the valuation of only one pipeline system in one city or town and shall name as appellees the commissioner and all persons, other than the appellant, to whom such valuation was required to be certified. Said board shall hear and decide the subject matter of such appeal and give notice of its decision to the commissioner, the owner, and the board of assessors; and, except as provided in section thirteen of chapter fifty-eight A, such decision shall be final and conclusive. Said board shall consolidate for the purpose of the hearing and decision aforesaid all appeals relating to the valuation of the same pipeline system in the same city or town, and in its discretion may so consolidate all appeals involving the same pipeline system although such appeals relate to more than one city or town.

Every pipeline subject to this section shall be assessed by the board of assessors of the city or town in which it is located at the valuation certified by the commissioner under this section; provided, however, that in the event of a final decision of the appellate tax board or of the supreme judicial court under the preceding paragraph establishing a different valuation, the assessors shall grant an abatement, or assess and commit to the collector with their warrant for collection an additional tax, as the case may be, to conform with the valuation so established by such final decision. Assessment pursuant to this paragraph shall be deemed to be a full compliance with the oath of office of each assessor and a full performance of his official duty with relation to the assessment of said pipeline. Added by St.1952, c. 614, § 2. Amended by St.1953, c. 654, § 31; St.1977, c. 199; St.1978, c. 514, §§ 81, 82; St.1981, c. 111, § 1; St.1987, c. 483, §§ 1 to 3.

§§ 38B, 38C. Repealed, 1978, 580, Sec. 30

§ 38D. Written return of information to determine valuation of real property

A board of assessors may request the owner or lessee of any real property to make a written return under oath within sixty days containing such information as may reasonably be required by it to determine the actual fair cash valuation of such property.

Failure of an owner or lessee of real property to comply with such request within 60 days after it has been made by the board of assessors shall be automatic grounds for dismissal of a filing at the appellate tax board. The appellate tax board and the county commissioners shall not grant exten-

sions for the purposes of extending the filing requirements unless the applicant was unable to comply with such request for reasons beyond his control or unless he attempted to comply in good faith. If any owner or lessee of real property in a return made under this section makes any statement which he knows to be false in a material particular, such false statement shall bar him from any statutory appeal under this chapter.

If an owner or lessee of Class one, residential property fails to submit the information within the time and in the form prescribed, the owner shall be assessed an additional penalty for the next ensuing tax year in the amount of $50 but only if the board of assessors informed the owner or lessee that failure to submit such information would result in the penalty.

If an owner or lessee of Class three, commercial or Class four, industrial property fails to submit the information within the time and in the form prescribed, the owner or lessee shall be assessed an additional penalty for the next ensuing tax year in the amount of $250 but only if the board of assessors informed the owner or lessee that failure to so submit such information would result in the penalty.

Added by St.1979, c. 797, § 16. Amended by St.1986, c. 385, § 4; St.2010, c. 188, §§ 47, 48, eff. July 27, 2010.

§ 38E. Testimony under oath concerning written return filed under Sec. 38D or application for abatement

A board of assessors may require testimony under oath of a taxpayer relative to his written return filed under section thirty-eight D and may also require testimony under oath of any applicant for abatement under section fifty-nine.

Added by St.1979, c. 797, § 17.

§ 38F. Written return of information to determine valuation of personal property

A board of assessors may request the owner or lessee of any personal property to make a written return under oath within sixty days containing such information as may reasonably be required by it to determine the actual fair cash valuation of such property.

Failure of an owner or lessee of personal property to comply with such request within sixty days after it has been made shall bar him from any statutory appeal under this chapter, unless such owner or lessee was unable to comply with such request for reasons beyond his control. If any owner or lessee of personal property in a return made under this section makes any statement which he knows to be false in a material particular, such false statement shall bar him from any statutory appeal under this chapter.

Added by St.1986, c. 385, § 5.

§ 38G. Testimony under oath concerning written return filed under Sec. 38F

A board of assessors may require testimony under oath of a taxpayer relative to his written return filed under section thirty-eight F and may also require testimony under oath of any applicant for abatement under section fifty-nine.

Added by St.1986, c. 385, § 5.

§ 38H. Transition payments to municipalities in which an affiliated generation facility is located

(a) For the purposes of this section, the term department shall refer to the department of telecommunications and energy.

Any electric company as defined in section 1 of chapter 164 which generates electricity or any distribution company as defined in said section 1 which is authorized by the commonwealth or the department to recover transition cost amounts associated with past investments in generation facilities, or any generation company or wholesale generation company as defined in said section 1 or such company's affiliate, subsidiary, or parent company which currently has no binding agreement for tax payments or payments in lieu of taxes to municipalities in which the company's generation facilities are located shall be required to make transition payments to any municipality in which an affiliated generation facility, as defined in said section 1, or part thereof, is located and has been devalued for property tax payment purposes; provided, however, that where such a binding agreement for the payment of real and personal property taxes or the binding agreement for payment in lieu of such taxes has been entered into on or after the effective date of this section, such agreement shall govern, and such generation facility shall be exempt from the provisions of this section. Said payments shall offset any reductions of property taxes as a result of any devaluation of said generation facility. This section does not provide for any exemption from property tax and is in addition to such tax obligation.

For the purposes of this section, "fiscal year" shall be determined by sections 56 and 56A of chapter 44. For fiscal years 1998, 1999 and 2000, such payments shall be the difference between the property taxes for fiscal years 1998, 1999 and 2000, respectively, and the property taxes for fiscal year 1997. From fiscal year 2001 to fiscal year 2009, inclusive, such future payments shall be calculated as follows:

(i) For fiscal year 2001, such amount shall be equivalent to 90 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2000, multiplied by the applicable commercial tax rate for the fiscal year 2001;

(ii) For fiscal year 2002, the calculated amount shall be equivalent to 80 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2001, multiplied by the applicable commercial tax rate for the fiscal year 2002;

(iii) For fiscal year 2003, the calculated amount shall be equivalent to 70 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2002, multiplied by the applicable commercial tax rate for the fiscal year 2003;

(iv) For fiscal year 2004, the calculated amount shall be equivalent to 60 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2003, multiplied by the applicable commercial tax rate for the fiscal year 2004;

(v) For fiscal year 2005, the calculated amount shall be equivalent to 50 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2004, multiplied by the applicable commercial tax rate for the fiscal year 2005;

(vi) For fiscal year 2006, the calculated amount shall be equivalent to 40 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2005, multiplied by the applicable commercial tax rate for the fiscal year 2006;

(vii) For fiscal year 2007, the calculated amount shall be equivalent to 30 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2006, multiplied by the applicable commercial tax rate for the fiscal year 2007;

(viii) For fiscal year 2008, the calculated amount shall be equivalent to 20 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2007, multiplied by the applicable commercial tax rate for the fiscal year 2008;

(ix) For fiscal year 2009, the calculated amount shall be equivalent to 10 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2008, multiplied by the applicable commercial tax rate for the fiscal year 2009.

Any such transition payments shall be included in the tax base for purposes of determining the levy ceiling and levy limit under section 21C of this chapter and in determining minimum residential factor and classification of property under section 1A of chapter 58 and section 56 of chapter 40. The department of revenue may issue guidelines for implementing the provisions of this subsection consistent with preserving the transition payment amounts in the local tax base for such purposes.

(b) A generation company or wholesale generation company which does not qualify for a manufacturing classification exemption pursuant to paragraph (3) of the clause Sixteenth of said section 5 may, in order to comply with its property tax liability obligation, execute an agreement for the payment in lieu of taxes with the municipality in which such generation facility is sited, and said company shall be exempt from property taxes, in whole or in part, as provided in any such agreements during the terms thereof. Any such agreement shall be the result of good faith negotiations and shall be the equivalent of the property tax obligation based on full and fair cash valuation. Any such negotiated amount shall be included in the tax base for purposes of determining the levy ceiling and levy limit under section 21C and in determining minimum residential factor and classification of property under section 1A of chapter 58 of the General Laws and section 56 of chapter 40 of the General Laws. The department of revenue

may issue guidelines for implementing the provisions of this subsection consistent with preserving the negotiated payment amount in the local tax base for such purpose.

A city or town, acting by and through its governing body and board of assessors, is hereby authorized to enter into an agreement with the New England Power Company concerning the assessed valuation of all real and personal property presently owned by said company in said city or town for the fiscal years 1997 to 2001, inclusive; provided, however, that said agreement shall constitute a good faith attempt to value said property at its fair market value. Any such agreement as described herein executed prior to and in effect on December 1, 1997, is hereby ratified, validated, and confirmed in all respects and as though this act had been in full force and effect at the time of the execution of said agreement.

(c) In the case of a nuclear-powered electric generation facility in the commonwealth which exceeds 250 megawatts in size and which was owned in whole or in part by an electric company as of July 1, 1997, whether or not such generation facility is in service as of the date of the collection in rates of the transition costs as defined pursuant to section 1 of chapter 164, such electric company shall not be subject to the provisions of subsections (a) and (b) and, in order to be eligible to collect the full amount of transition costs as approved by the department pursuant to section 1G of said chapter 164, shall enter into an agreement to pay the host community payments in addition to taxes. Such payments in addition to taxes shall be made in equal payments on or before July 31, October 31, January 31 and April 30 of each year by such electric company in the following amounts: for fiscal years 1999, 2000 and 2001, in an amount which, when added to the amount of taxes due for each year, equals the amount of tax payments remitted to such host community in fiscal year 1998. Such electric company shall, by the commencement of fiscal year 2002, have entered into an agreement to pay the host community payments in lieu of taxes for such generation facility; provided, however, that such agreement shall be executed as a result of good faith negotiations between the electric company and the host community; provided further, that such agreement shall cover a period of time the greater of which is the time until the licensed termination date of such facility, as included in the original license or in a renewal of such license or 15 years beginning with fiscal year 1998. For the purposes of this subsection, the standard of good faith shall not require either party to agree to a proposal or require the making of concessions but shall require active participation in negotiations and a willingness to make reasonable concessions and to provide justification for proposals and a sincere effort to reach agreement. In the event that an agreement on such payment in lieu of taxes cannot be effected through such good faith negotiations on or before January 1, 1999, the parties shall submit to arbitration and such arbitration shall be performed by the department of telecommunications and energy or by a state-certified professional arbitrator or arbitration firm appointed by said department and operating in accordance with any applicable rules and regulations. The department shall not approve any plan submitted by such electric company to utilize the provisions of securitization pursuant to section 1H of chapter 164 if such tax agreement has not been executed pursuant to the provisions of this subsection. Such payments in addition to and in lieu of taxes, whether determined by the provisions of this subsection or by negotiation or by arbitration, shall be included in the tax levy and the attributed valuation related to such payments in addition to and in lieu of taxes, which shall be calculated by dividing the payments in addition to taxes by the current tax rate expressed as a decimal, and shall be included in the total assessed valuation for the purposes of determining the levy ceiling and levy limit under said section 21C and in determining the minimum residential factor and classification of property under section 1A of chapter 58 and section 56 of chapter 40. The department of revenue may issue guidelines for implementing the provisions of this subsection consistent with preserving the payment in addition to and in lieu of taxes in the local tax base for such purpose.

Notwithstanding the provisions of any general or special law to the contrary, the town of Plymouth, acting through its board of selectmen, may enter into a certain agreement dated March 16, 1999 with the Boston Edison Company relating to property taxes, payments in addition to property taxes, payments in lieu of property taxes for the Pilgrim Nuclear Power Station, as that property is defined in the agreement, for the fiscal years 1998 to 2012, inclusive. Such agreement is hereby authorized, ratified, validated and confirmed in all respects as satisfying all of Boston Edison Company's obligations under this section with respect to agreements relating to property taxes, payments in addi-

tion to property taxes and payments in lieu of property taxes for the Pilgrim Nuclear Power Station.

Added by St.1997, c. 164, § 71. Amended by St.1998, c. 194, § 115; St.1998, c. 463, §§ 47, 48; St.1998, c. 481, § 3; St.1999, c. 24, § 1; St.2000, c. 128, § 2.

§ 39. Telephone and telegraph companies; valuation of poles, wires, etc.

The valuation at which the machinery, poles, wires and underground conduits, wires and pipes of all telephone and telegraph companies shall be assessed by the assessors of the respective cities and towns where such property is subject to taxation shall be determined annually by the commissioner of revenue, subject to appeal to the appellate tax board, as hereinafter provided. On or before May fifteenth in each year, the commissioner of revenue shall determine and certify to the owner of such machinery, poles, wires and underground conduits, wires and pipes, and to the board of assessors of every city and town where such machinery, poles, wires and underground conduits, wires and pipes are subject to taxation, the valuation as of January first in such year of such machinery, poles, wires and underground conduits, wires and pipes in said city or town. Every owner and board of assessors to whom any such valuation shall have been so certified may, on or before the fifteenth day of June then next ensuing, appeal to the appellate tax board from such valuation. Every such appeal shall relate to the valuation of the machinery, poles, wires and underground conduits, wires and pipes of only one owner in one city or town, and shall name as appellees the commissioner of revenue and all persons, other than the appellant, to whom such valuation was required to be certified. In every such appeal, the appellant shall have the burden of proving that the value of the machinery, poles, wires and underground conduits, wires and pipes is substantially higher or substantially lower, as the case may be, than the valuation certified by the commissioner of revenue. The appellate tax board shall hear and decide the subject matter of each such appeal without priority over other appeals pending before it and give notice of its decision to the commissioner of revenue, the owner and the board of assessors; and except as provided in section thirteen of chapter fifty-eight A, such decision shall be final and conclusive. The appellate tax board shall consolidate for the purpose of the hearing and decision aforesaid all appeals relating to the valuation of the machinery, poles, wires and underground conduits, wires and pipes of the same owner in the same city or town, and in its discretion may so consolidate any or all appeals relating to the valuation of the machinery, poles, wires and underground conduits, wires and pipes of the same owner, although such appeals relate to more than one city or town. All appeals taken under this section by the same owner at the same time shall be deemed to constitute one appeal for the purpose of determining the entry fee payable therefor under section seven of chapter fifty-eight A.

The board of assessors shall assess the machinery, poles, wires and underground conduits, wires and pipes of all telephone and telegraph companies as certified and at the value determined by the commissioner of revenue under this section; provided, however, that in the event of a final decision by the appellate tax board or of the supreme judicial court under the preceding paragraph establishing a different valuation, the assessors shall grant an abatement, or assess and commit to the collector with their warrant for collection an additional tax, as the case may be, to conform with the valuation so established by such final decision. Assessment pursuant to this paragraph shall be deemed to be a full compliance with the oath of office of each assessor and a full performance of his official duty with relation to the assessment of such property, except as provided in the following section.

Amended by St.1933, c. 254, § 36; St.1939, c. 451, § 22; St.1953, c. 468; St.1953, c. 654, § 32; St.1955, c. 344, § 1; St.1978, c. 514, § 83; St.1981, c. 111, § 2.

Historical and Statutory Notes

St.1915, c. 137, § 1.
St.1918, c. 138.
St.1930, c. 416, § 12.

§ 40. Telephone and telegraph companies; assessors; informing commissioners

Every board of assessors shall, as and when required by the commissioner, furnish him with any and all information in its knowledge or possession relating to any property, the value of which he is required to determine by the preceding section.

Amended by St.1953, c. 654, § 33; St.1978, c. 514, § 84.

Historical and Statutory Notes

St.1915, c. 137, § 2.

§ 41. Telephone and telegraph companies; returns

Every telephone or telegraph company owning any property required to be valued by the commis-

sioner under section thirty-nine shall annually, on or before a date determined by the commissioner but in no case later than March first, make a return to the commissioner signed and sworn to by its treasurer. This return shall be in the form and detail prescribed by the commissioner and shall contain all information which he shall consider necessary to enable him to make the valuations required by section thirty-nine, and shall relate, so far as is possible, to the situation of the company and its property on January first of the year when made. Property returned to the commissioner as herein provided need not be included in the list required to be filed by a telephone or telegraph company under section twenty-nine. Failure to make the return required by this section shall bar the company from any appeal of the commissioner's determination of value under section thirty-nine, unless such company was unable to comply with such request for reasons beyond such company's control. If any company, or any treasurer thereof, in a return made under this section makes any statement which is known to be false in a material particular, such false statement shall bar it from any appeal under section thirty-nine.

Amended by St.1933, c. 254, § 37; St.1953, c. 654, § 34; St.1978, c. 514, § 84; St.1987, c. 483, § 4.

Historical and Statutory Notes

St.1915, c. 137, § 3.

§ 42. Telephone and telegraph companies; failure to make returns

If any company, or any treasurer thereof, shall in any year, fail to make the return required by section forty-one, the commissioner shall estimate the value of the property of the company according to his best information and belief.

Amended by St.1953, c. 654, § 35; St.1978, c. 514, § 84; St.1987, c. 483, § 5.

Historical and Statutory Notes

St.1915, c. 137, § 4.

§ 42A. Amended valuation of property held by pipeline or telephone or telegraph company; collection of additional assessment; appeals

For the purpose of verifying that an owner of a pipeline or a telephone or telegraph company required to make a return under section 38A or section 41 has made a complete and accurate accounting of the property required to be returned, the commissioner shall have all the powers and remedies provided by said section 31A to assessors of cities and towns. If the commissioner reasonably believes, as a result of an examination of the books, papers, records and other data or otherwise, that taxable personal property for a fiscal year was not valued or was incorrectly valued, the commissioner may, not later than 3 years and 6 months after the date the return was due or 3 years and 6 months after the date the return was filed, whichever is later, certify an amended valuation to the owner of the pipeline or telephone or telegraph company and to the boards of assessors of the cities and towns wherein the property was subject to taxation for that year. Not later than 2 months after the date of the amended certification, the assessors shall assess and commit to the collector with their warrant for collection an additional tax to the owner of the pipeline or telephone or telegraph company. An owner or company aggrieved by the assessment of the additional tax may, within 1 month after the bill or notice of the additional assessment is first sent, appeal the valuation to the appellate tax board. The appeal shall name as appellees the commissioner and the board of assessors. Except as otherwise provided in this section, the hearing and appeal before the appellate tax board shall proceed in the same manner as an appeal of the valuations originally certified by the commissioner.

Added by St.2010, c. 188, § 49, eff. July 27, 2010.

§ 43. Valuation and assessment books; public inspection

The assessors shall make, on the books furnished as provided in section forty-five, a list of the valuation and the assessment thereon, in the following manner: In each column provided in the book or books so furnished shall be entered the valuation of that portion, if any, of the personal property of each person and corporation, indicated by the heading thereof. The total amount of the taxable personal property shall be shown, but without other detail or specification than is provided for herein. Before the taxes are committed for collection they shall deposit the books, or an attested copy thereof, in their office or, if there is no office, with their chairman, for public inspection.

Amended by St.1948, c. 112, § 1.

Historical and Statutory Notes

St.1785, c. 50, § 8.
St.1823, c. 139, § 3.
R.S.1836, c. 7, § 29.
G.S.1860, c. 11, § 33.
St.1861, c. 167.
P.S.1882, c. 11, § 50.

St.1888, c. 307.
St.1898, c. 507, § 2.
R.L.1902, c. 12, § 56.
St.1909, c. 490, pt. 1, § 55.
St.1928, c. 14, § 1.

§ 44. Lists; contents

The list shall exhibit the valuation, classification and assessment of the estates of the inhabitants assessed; and the valuation, classification and assessment of the estates of nonresident owners, and shall contain the names of the nonresident owners of the property assessed, or such description of them as can be given, their places of abode, if known, the description of their estate, and the tax thereon.

Amended by St.1963, c. 160, § 19; St.1973, c. 671, § 1; St.1978, c. 580, § 31; St.1979, c. 797, § 17.

Historical and Statutory Notes

St.1828, c. 143, § 5.
R.S.1836, c. 7, § 30.
G.S.1860, c. 11, § 34.
St.1861, c. 167.
P.S.1882, c. 11, § 51.
R.L.1902, c. 12, § 57.
St.1908, c. 387, § 1.
St.1909, c. 490, pt. 1, § 56.

§ 45. Books furnished by municipalities

Each city or town shall provide, on or before January first, annually, suitable books for the use of its assessors in the assessment of taxes, which shall contain blank columns with uniform headings for a valuation list, in such form as the commissioner shall, from time to time, determine and approve.

Amended by St.1933, c. 254, §§ 38, 39; St.1948, c. 112, § 2; St.1963, c. 160, § 20; St.1969, c. 532, § 1.

Historical and Statutory Notes

St.1861, c. 167, § 1.
St.1879, c. 72, § 2.
P.S.1882, c. 11, § 52.
St.1883, c. 41, § 1.
St.1887, c. 86, § 2.
St.1890, c. 242, § 2.
St.1891, c. 65.
St.1898, c. 507, § 2.
R.L.1902, c. 12, § 58.
St.1907, c. 181.
St.1908, c. 314.
St.1908, c. 387, § 2.
St.1909, c. 440, § 2.
St.1909, c. 490, pt. 1, § 57.
St.1914, c. 198, § 2.
St.1920, c. 307.
St.1925, c. 343, §§ 11, 13.
St.1926, c. 222.
St.1928, c. 14, § 2.

§ 46. Entries in books

The assessors shall enter in the books so furnished the valuation, classification and assessment of the estates of the persons assessed, as directed in the headings of the various columns and shall state the value of each building described, including therein water wheels but excluding land and water power and machinery used in the building. Such valuation book shall contain at the end thereof a summary listing the total valuation for each classification of property as prescribed by the commissioner.

Amended by St.1963, c. 160, § 21; St.1973, c. 671, § 2; St.1978, c. 580, § 32; St.1989, c. 341, § 36.

Historical and Statutory Notes

St.1861, c. 167, § 2.
St.1879, c. 72, § 1.
P.S.1882, c. 11, § 53.
St.1883, c. 41, § 2.
St.1898, c. 507, § 2.
R.L.1902, c. 12, § 59.
St.1909, c. 490, pt. 1, § 58.
St.1918, c. 257, § 38.
St.1919, c. 5.
St.1920, c. 2.
St.1928, c. 14, § 3.

§§ 47, 48. Repealed, 1969, 532, Sec. 2

§ 49. Repealed, 1985, 300, Sec. 1

§ 50. Required books; copies of laws, etc.

The books required by section forty-five shall contain a copy of this section, of sections forty-three, forty-four, forty-five, forty-six and forty-nine, and of sections eighty-four and ninety-four, and such certificates as are required by law to be signed by the assessors, with such explanatory notes as the commissioner considers necessary to secure uniformity of returns under the several headings.

Amended by St.1948, c. 112, § 4; St.1971, c. 262, § 1.

Historical and Statutory Notes

R.L.1902, c. 12, § 63.
St.1909, c. 490, pt. 1, § 62.

§ 51. Exempted property; entries on valuation lists

The assessors shall enter upon the valuation list, in the appropriate columns after the enumeration of the persons and estates liable to taxation therein contained, a statement and description of all the property and estate, with the fair cash value thereof, which is exempted from taxation in their respective towns pursuant to the provisions of the first fifteen clauses of section five, or for the reason that it is owned by a county, city, town or district and put to a public use, with the names of the

persons or corporations owning the same and the purpose for which it is used, and with a reference to the law, if any, by which such exemption is allowed.

Historical and Statutory Notes

St.1874, c. 227, § 1.
P.S.1882, c. 11, § 58.
R.L.1902, c. 12, § 64.
St.1909, c. 490, pt. 1, § 63.
St.1923, c. 421.

§ 52. Valuation lists; statement of assessors; penalties

The assessors, or other persons authorized to assess taxes, shall, at the end of said valuation list, subscribe the following statement:

We, the assessors (or other persons so authorized, as the case may be,) of , do severally state, that the foregoing list is a full and true list of the names of all persons known to us, who are liable to taxation in , (here insert the name of the city or town,) during the present year, and that the real and personal estate contained in said list, and assessed upon each person in said list, is a full and accurate assessment upon all the property of each person, liable to taxation, at its full and fair cash value, according to our best knowledge and belief. This statement is made under the penalties of perjury.

Failure to subscribe the foregoing statement shall not invalidate a tax otherwise legally assessed; but whoever assesses taxes in a town without having subscribed the same shall be punished by a fine of ten dollars.

Historical and Statutory Notes

St.1785, c. 50, § 5.
R.S.1836, c. 15, § 55.
St.1853, c. 319, § 2.
St.1857, c. 306, §§ 1, 2.
G.S.1860, c. 11, §§ 36, 37.
P.S.1882, c. 11, §§ 59, 60.
R.L.1902, c. 12, §§ 65, 66.
St.1909, c. 490, pt. 1, § 64.
St.1928, c. 14, § 5.

§ 52A. Plans showing boundaries in city or town; delivery to court

The assessors, upon receiving for their general use, newly completed or revised plans showing locations of boundaries of real property in the city or town, shall deliver copies of such plans to the land court department of the trial court.

Added by St.1980, c. 180.

§ 52B. Official inspection of valuation information, release of comparable sales data

All information collected pursuant to section 8A of chapter 58A and sections 38D, 38E, 57D and 61A of this chapter shall be open to the inspection of the assessors, the commissioner, the deputies, clerks and assistants of either the assessors or the commissioner and such other officials of the commonwealth or of its political subdivisions who have occasion to inspect such information in the performance of their official duties, but to no other person except by order of the appellate tax board or a court, except that if the assessor bases a valuation of an assessed owner's real or personal property, in whole or in part, on a comparable sale, or sales, the assessor shall provide any market data relating to such comparable sale or sales to the assessed owner of the property or his designated representative upon request.

Added by St.1986, c. 385, § 6. Amended by St.2002, c. 399, § 1.

§ 52C. Public access to terminals or other data processing equipment

The provisions of section ten of chapter sixty-six shall not be deemed to authorize public access to terminals or other data processing equipment for the purpose of copying, reading, collecting, printing, analyzing or manipulating any data or other information collected under any provision of this chapter and stored in data processing or computing equipment or to authorize the release of the original or copies of tapes, cards, disc files or other methods of electronic storage of such data or information, unless authorized by the commissioner of revenue.

Nothing contained in this section shall restrict the right of a person assessed or his designated representative to inspect at the assessor's office information and records relating to the valuation and assessment of his property or to receive copies of this information.

Added by St.1986, c. 385, § 6.

§ 53. Tax lists; commitment; warrants; collector of taxes

The assessors shall, within a reasonable time, commit the tax list with their warrant to the collector of taxes, and, if there is a fire, water, light or improvement district in the town, they shall commit to him a separate list and warrant for the

district taxes. If no collector has been chosen, they shall commit such list with their warrants, to a constable; or, if there is no constable, to the sheriff or his deputy; but the assessors of a town shall not commit a tax list to the collector until the bonds of such collector and of the town treasurer have been given and approved as required by law.

Historical and Statutory Notes

St.1785, c. 50, § 6.
St.1785, c. 70, §§ 1, 3.
St.1815, c. 130, § 4.
R.S.1836, c. 7, §§ 32, 34.
G.S.1860, c. 11, § 38.
St.1879, c. 157, § 1.
P.S.1882, c. 11, § 62.
R.L.1902, c. 12, § 67.
St.1909, c. 490, pt. 1, § 66.
St.1919, c. 319, § 1.

§ 54. Tax lists; form; contents

The tax list committed to the collector shall be in a form approved by the commissioner and shall contain such data appearing on the assessors' valuation list as may be required for the purposes of sections three and three A of chapter sixty.

Amended by St.1954, c. 444, § 1.

Historical and Statutory Notes

St.1828, c. 143, § 6.
R.S.1836, c. 7, § 31.
G.S.1860, c. 11, § 35.
P.S.1882, c. 11, § 61.
St.1887, c. 235, § 1.
R.L.1902, c. 12, § 68.
St.1909, c. 490, pt. 1, § 67.
St.1926, c. 65, § 5.

§ 55. Warrants; form; contents

The warrant shall specify the duties of the collector as prescribed by law in the collection of taxes, the times when and the person to whom he shall pay them, shall be substantially in the form heretofore used, and need not be under seal.

Historical and Statutory Notes

St.1785, c. 50, § 6.
St.1785, c. 70, § 1.
R.S.1836, c. 7, §§ 32, 33.
G.S.1860, c. 11, § 39.
P.S.1882, c. 11, § 63.
R.L.1902, c. 12, § 69.
St.1909, c. 490, pt. 1, § 68.

§ 56. Lost or destroyed warrants

If a warrant issued for the collection of taxes is lost or destroyed, the assessors may issue a new warrant therefor, which shall have the same force and effect as the original warrant.

Historical and Statutory Notes

St.1799, c. 83.
R.S.1836, c. 8, § 51.
G.S.1860, c. 11, § 40.
P.S.1882, c. 11, § 64.
R.L.1902, c. 12, § 70.
St.1909, c. 490, pt. 1, § 69.

§ 57. Bills for taxes; due date; interest; amounts overdue

Except as otherwise provided, bills for real estate and personal property taxes shall be sent out seasonably upon commitment in every city, town and district in which the same are assessed, and shall be due and payable on July first of each year for all purposes except the calculation of interest as provided in this section. If any betterment assessment or apportionment thereof, water rate or annual sewer use charge added to such tax, or more than one-half of the balance of any such tax as reduced by any abatement, remains unpaid either after November first of the fiscal year in which it is payable, or after the thirtieth day after the date on which the bill for such tax was mailed after October first, interest at the rate of fourteen per cent per annum, computed from October first, or from the date the bill for such tax was mailed if mailed after October first, shall be paid on so much of the unpaid amount as is in excess of said one-half of such balance. If the whole or any part of such tax remains unpaid after May first of such fiscal year, in addition to the interest as aforesaid, interest at such rate shall be paid on so much of the balance of such tax not so paid as does not exceed one half of such tax as reduced by any abatement and computed from April first of such fiscal year. Not later than April first of such fiscal year a notice shall be sent out showing the amount of such tax which, if not paid by May first, shall bear interest computed from April first. Bills for taxes assessed under section seventy-five or section seventy-six shall be sent out seasonably upon commitment, and shall be due and payable on the thirtieth day after the date on which the bill for such tax was mailed for all purposes except the calculation of interest as provided in this section. Taxes shall bear interest as hereinbefore provided in this section with respect to real estate and personal property taxes generally; provided, however, that if a bill for any such taxes is mailed on or after April first of the fiscal year to which the tax relates and remains unpaid after the thirtieth day after the date on which such bill was mailed, interest at the aforesaid rate, computed from the date such bill was mailed, shall be paid on so much of the tax

that remains unpaid. In all cases where interest is payable it shall be added to and become a part of the tax. Interest which pursuant to this section shall have been added to and become a part of any tax other than a tax reassessed under section seventy-seven shall be waived by the collector if the amount of such tax, exclusive of such interest, is tendered to him within thirty days after the bill for such tax is first sent. A first actual real estate tax bill sent out for fiscal year 2008 or any subsequent year pursuant to this section shall contain a statement that there exists a delinquency if any tax, betterment assessment or apportionment thereof, water rate, annual sewer use, or other charge which may constitute a lien is overdue for more than 90 days. Such delinquencies shall not include amounts due relating to fire service, electric, water or sewer use in any city or town served by more than 1 independent municipal or district fire, electric, water, sewer, or joint water and sewer district or in any city or town served by an independent municipal or district fire, electric, water, sewer, or joint water and sewer district that is not principally domiciled in that city or town.

Amended by St.1933, c. 151, § 1; St.1933, c. 254, § 42; St.1935, c. 158, § 1; St.1937, c. 203, § 1; St.1938, c. 330, § 1; St.1941, c. 258, § 1; St.1947, c. 99, § 1; St.1947, c. 522, § 1; St.1949, c. 265, § 1; St.1949, c. 278, § 1; St.1963, c. 160, § 22; St.1965, c. 597, § 1; St.1968, c. 290, § 1; St.1969, c. 849, §§ 68, 69; St.1971, c. 766, § 22; St.1973, c. 52, § 6; St.1976, c. 101, § 1; St.1976, c. 250, § 1; St.1977, c. 349; St.1979, c. 503, § 1; St.1988, c. 43, §§ 2 to 4; St.2003, c. 46, § 52, eff. July 31, 2003; St.2004, c. 149, § 107, eff. July 1, 2004; St.2006, c. 122, § 19, eff. June 24, 2006; St.2007, c. 74, § 1, eff. July 25, 2007.

Historical and Statutory Notes

St.1873, c. 225, § 1.
St.1878, c. 185, § 1.
St.1879, c. 74.
P.S.1882, c. 11, §§ 67, 68.
St.1900, c. 168.
R.L.1902, c. 12, § 72.
St.1909, c. 490, pt. 1, § 71.
St.1913, c. 688, § 1.
St.1915, c. 237, § 21.
St.1916, c. 103.
St.1918, c. 190, § 1.
St.1920, c. 460.
St.1926, c. 269, § 2.

§ 57A. Unpaid taxes not in excess of twenty-five dollars; interest

In any city or town which accepts the provisions of this section notwithstanding the provisions of section fifty-seven, if a bill for real estate or personal property taxes, in an amount not in excess of twenty-five dollars, remains unpaid after November first of the fiscal year in which it is payable, or after the thirtieth day after the date on which the bill for such tax was mailed, if mailed after October first, interest at the rate of fourteen per cent per annum computed from October first, or from the date the bill for such tax was mailed, if mailed after October first, shall be paid on such unpaid tax.

Added by St.1985, c. 598, § 1.

§ 57B. Unpaid taxes not in excess of fifty dollars; interest

In any city or town which accepts the provisions of this section, notwithstanding the provisions of section fifty-seven, if a bill for real estate or personal property taxes, in an amount not in excess of fifty dollars, remains unpaid after November first of the fiscal year in which it is payable, or after the thirtieth day after the date on which the bill for such tax was mailed, if mailed after October first, interest at the rate of fourteen per cent per annum computed from October first, or from the date the bill for such tax was mailed, if mailed after October first, shall be paid on such unpaid tax.

Added by St.1987, c. 402, § 1.

§ 57C. Preliminary tax for real estate and personal property; notice; installment payments

This section shall be applicable in any city or town which accepts this section for the purpose of establishing quarterly tax payments or semi-annual tax payments, notwithstanding section 57. Except as otherwise provided, a notice of preliminary tax for real estate and personal property shall be sent out no later than July 1 of each year. In the case of cities and towns with quarterly tax payments, the preliminary tax shall be due and payable in 2 installments, the first installment due on August 1, the second installment on November 1, after which dates if unpaid, they shall become delinquent and subject to interest as provided herein, and in the case of cities and towns with semi-annual tax payments, the preliminary tax shall be due and payable on October 1, after which date if unpaid, it shall become delinquent and subject to interest as provided herein. The preliminary tax shall in no event exceed 50 per cent of 102 ½ per cent of the tax payable during the preceding fiscal year and of the amount by which such tax would have increased if any referendum question submitted to the voters under paragraph (g), (i½), (j) or (k) of section 21C and approved for the fiscal year had been approved for the preceding fiscal year.

Notwithstanding the provisions of the first paragraph, a notice of preliminary tax may be sent out after July first by cities and towns with quarterly tax payments; provided, however, that no such notice of preliminary tax shall be sent unless first approved by the commissioner of revenue; provided, further, that as a condition of such approval, the commissioner may establish such requirements as he deems appropriate, which may include, but not be limited to, the submission by the board of assessors of all information required to set the tax rate under the provisions of section twenty-three, except the assessed valuation of all real and personal property subject to taxation for the current fiscal year. Any notice of preliminary tax mailed after July first shall be due and payable in two installments, the first installment due thirty days after the mailing of the notice, the second November first, after which dates if unpaid, they shall become delinquent and subject to interest as provided herein; provided, however, that in the event that such notice is mailed after August first, the entire notice shall be due and payable November first, or thirty days after the date of mailing, whichever is later. Any notice of preliminary tax mailed after July 1 by cities and towns with semi-annual tax payments shall be due and payable October 1 after which date if unpaid, it shall become delinquent and subject to interest as provided herein; provided, however, that in the event that such notice is mailed after August 1, the notice shall be due and payable November 1, or 30 days after the date of mailing, whichever is later.

All provisions of law regarding the procedures for issuing, mailing and collecting tax assessments upon real and personal property and betterment assessments shall be applicable to the notice of preliminary tax provided hereunder, including the payment of interest. To the extent that any rights or remedies under law accrue from the date that the tax bill is issued, only the tax bill issued upon the establishment of the tax rate for the current fiscal year shall govern such rights and remedies. The provisions of section twenty-one C shall apply to the tax rate established by the city or town for the current fiscal year.

Notwithstanding the provisions of the first paragraph, a city or town that seeks to issue a notice of preliminary tax for any fiscal year may require the payment of a preliminary tax in excess of fifty percent of one hundred and two and one-half percent of the tax payable during the preceding fiscal year and of the amount by which such tax would have increased if any referendum question submitted to the voters under the provisions of paragraph (g), (i½), (j) or (k) of section twenty-one C and approved for the fiscal year had been approved for the preceding fiscal year, to the extent that such excess represents one-half of the amount of tax accruing as a result of the loss of exemption from tax that had been granted in the preceding fiscal year, improvements to the parcel, or the parcel being taxed as a separate parcel for the first time. A city or town is further authorized under this paragraph to issue a notice of preliminary tax for any property which becomes subject to taxation for the first time in a current fiscal year.

Notwithstanding the provisions of any general or special law to the contrary, the assessors of any city or town that issues a notice of preliminary tax may add any betterment assessment or apportionment thereof, water rate, annual sewer use charge and any other charge placed on the annual tax bill to the preliminary tax on the property to which it relates and such amount shall become part of the preliminary tax.

The assessors may, on application or on their own motion, abate so much of the preliminary tax as remains unpaid that is in excess of the property owner's proportional share.

The actual tax bill issued upon the establishment of the tax rate for the fiscal year, after credit is given for the preliminary tax payments previously made, and in the case of cities and towns with quarterly payments, shall be due and payable in 2 installments, on February 1 and on May 1 respectively, after which dates, if unpaid, they shall become delinquent and, in the case of cities and towns with semi-annual payments, shall be due and payable on April 1, after which date, if unpaid, they shall become delinquent. A first actual real estate tax bill sent out for fiscal year 2008 or any subsequent year pursuant to this section shall contain a statement that there exists a delinquency if any tax, betterment assessment or apportionment thereof, water rate, annual sewer use, or other charge which may constitute a lien is overdue for more than 90 days. Such delinquencies shall not include amounts due relating to fire service, electric, water or sewer use in any city or town served by more than 1 independent municipal or district fire, electric, water, sewer, or joint water and sewer district or in any city or town served by an independent municipal or district fire, electric, water, sewer, or joint water and sewer district that is not principally domiciled in that city or town.

In the event that actual tax bills are not mailed by December 31, then the full balance of the actual tax bill issued upon establishment of the tax rate for the fiscal year, after credit is given for the preliminary tax payments previously made, shall be due and payable on May 1, or 30 days after the date of mailing, whichever is later.

Notwithstanding the provisions of the preceding paragraph, whenever such actual tax bills cannot be mailed by December 31 by cities and towns with quarterly tax payments, an additional notice of preliminary tax may be issued and payment of a third quarter preliminary installment may be required; provided, however, that no such additional notice of preliminary tax may issue unless first approved by the commissioner of revenue; and provided, further, that as a condition of such approval, the commissioner may establish such requirements as he deems appropriate, which may include, but not be limited to, the submission by the board of assessors of all information required to set the tax rate under the provisions of section 23, except the assessed valuation of all real and personal property subject to taxation for the current fiscal year. The assessors shall establish the tax rate for the fiscal year no later than April 1. In no event shall the net amount of revenue to be raised by taxation, as submitted to the commissioner pursuant to any such requirements for approval under this section, be exceeded, except to the extent that additional new growth, as certified by the commissioner pursuant to paragraph (f) of section 21C, exceeds the prior approved amount and a referendum question submitted to the voters under the provisions of paragraph (g), (i½), (j) or (k) of said section 21C has been approved.

In the event an additional notice of preliminary tax requiring a third quarter preliminary installment payment is issued by a city or town, such notice shall be mailed on or before December 31, or such later date as may be authorized by the commissioner, and such entire notice shall be due and payable on February 1, or 30 days after the date of mailing such notice, whichever is later, after which date if unpaid, it shall become delinquent. The amount of any third quarter preliminary installment payment shall not exceed the amount of the first quarter installment payment for the fiscal year as provided in this section. The actual tax bill issued upon the establishment of the tax rate for the fiscal year, after credit is given for the preliminary tax payments previously made, shall be due and payable on May 1, or 30 days after the date of mailing such bill, whichever is later, after which date if unpaid, it shall become delinquent. Such bill shall represent the full balance owed after credit is given for the preliminary tax payments previously made. All provisions of this section regarding procedures for issuing, mailing and collecting the notice of preliminary tax requiring first and second quarter preliminary installment payments shall be applicable to any additional notice of preliminary tax, including payment of interest.

Bills for taxes assessed under section seventy-five or section seventy-six shall be sent out seasonably upon commitment, and shall be due and payable on May first or thirty days after the date on which the said bills are mailed, whichever is later.

If any such installment, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to such tax, as reduced by any abatement is not timely paid, it shall be delinquent, and interest at the rate of fourteen percent per annum computed from the due date shall be paid. For purposes of this section, amounts not timely received shall be deemed unpaid. The commissioner of revenue may issue guidelines as appropriate for the implementation of this section.

Added by St.1989, c. 653, § 41. Amended by St.1996, c. 284, §§ 5 to 8; St.1997, c. 237, § 1; St.2003, c. 46, §§ 53, 54, eff. July 31, 2003; St.2004, c. 149, §§ 108 to 112, eff. July 1, 2004; St.2004, c. 352, § 26, eff. Sept. 17, 2004; St.2006, c. 122, § 20, eff. June 24, 2006; St.2007, c. 74, § 2, eff. July 25, 2007.

§ 57D. Affidavit of address

A notice of preliminary, estimated or actual tax for real estate and personal property shall include an affidavit of address, to be signed and sworn to by the owner of record of such property. The affidavit shall include the following information: name of the owner, street number, street name, city or town, state and zip code. The affidavit shall not be required of those property owners for any parcel for which the owner has been granted, in the previous fiscal year, a residential exemption under section 5C.

The affidavit shall not be required of those owners of parcels subject to chapter 183A.

In the event that the residence of the owner of record is located outside of the commonwealth, he shall appoint an agent located within the commonwealth and the enclosed affidavit shall be completed by stating the agent's full name, street number,

street address, city or town, zip code and telephone number. In no event shall post office boxes be accepted as an address for purposes of this section.

Information provided by taxpayers pursuant to this section shall not be a public record and shall be used by the city or town only for either the mailing of legal notices or to contact property owners for other municipal purposes. In no event shall any information provided pursuant to this section be sold, distributed or copied to any individual or organization in any form.

Any legal notice mailed to the address listed in the affidavit, whether the address of the owner of record or his agent, shall be presumed to be good and sufficient service for the purpose of instituting any legal action relating to the property.

If there is any change in the information provided on the affidavit for the owner of record or his agent, the owner shall immediately notify the local board of assessors by mailing a new affidavit.

If an owner fails to comply with this section, a city or town may notify the owner of that noncompliance. The owner shall have an additional 30 days from the date of service of the notice of noncompliance within which to file an affidavit or otherwise comply with this section. If an owner fails to file the affidavit within this additional 30–day period or otherwise to comply with this section, the city or town may impose a fine of $100 per preliminary tax bill on the owner. If an owner fails to pay any fine imposed under this section, a city or town may then determine that the fine constitute a lien upon the real estate and the fine shall thereafter be subject to collection by a city or town through means which are generally available to cities and towns for the collection of outstanding property taxes.

Upon receipt of payment or notification of abatement of any fine imposed under this chapter or upon receipt of the affidavit required by this chapter, any city or town that has determined the fine to constitute a lien upon the property and has initiated proceedings to recover the fine, shall issue a release of lien in recordable form within 30 days of the receipt of the payment, notice of abatement or an affidavit required by this section. For good cause shown, a city or town may abate any part or all of a fine that was imposed under this section, if the affidavit required by this section is filed with the city or town as required by this section.

The provisions of this section shall take effect in any city or town upon its acceptance by such city or town.

Added by St.1995, c. 126. Amended by St.2002, c. 399, §§ 2 to 6, eff. Mar. 11, 2003.

§ 58. Discounts on taxes

In any city or town that accepts the provisions of this section, on all property taxes assessed in a city or town and collected by a city or town tax collector, discounts for the early and full payment thereof shall be three percent if the taxpayer pays the entire tax bill for the fiscal year in which said tax is due by November first or within thirty days if the bill for such tax was mailed later than October first.

In any city or town that accepts the provisions of this section and that has adopted the provisions of section fifty-seven C, the discount for early and full payment of the tax bill shall be three percent if the taxpayer pays the entire tax bill for the fiscal year in which said tax is due, notwithstanding any provisions of said section fifty-seven C, by August first or within thirty days if the tax bill was mailed later than July first. In the event it is determined at the end of a fiscal year that a taxpayer, who has exercised this option, has overpaid his tax for said fiscal year, the tax bill for the next fiscal year for said taxpayer shall be reduced by the amount that was determined to have been overpaid in the previous fiscal year.

Amended by St.1995, c. 181, § 2.

Historical and Statutory Notes

St.1815, c. 130, §§ 2, 4.
R.S.1836, c. 7, §§ 35, 36.
G.S.1860, c. 11, §§ 41, 42.
P.S.1882, c. 11, §§ 65, 66.
R.L.1902, c. 12, § 71.
St.1909, c. 490, pt. 1, § 70.
St.1913, c. 688, §§ 3, 5.

§ 58A. Minimum abatement or refund of property tax

No abatement or refund of property tax, real or personal, shall be granted or paid in an amount less than one dollar.

Added by St.1987, c. 376.

§ 59. Abatements

A person upon whom a tax has been assessed or the administrator of the estate of such person or the executor or trustee under the will of such person, if aggrieved by such tax, may, except as hereinafter otherwise provided, on or before the

last day for payment, without incurring interest in accordance with the provisions of section fifty-seven or section fifty-seven C, of the first installment of the actual tax bill issued upon the establishment of the tax rate for the fiscal year to which the tax relates, apply in writing to the assessors, on a form approved by the commissioner, for an abatement thereof, and if they find him taxed at more than his just proportion or upon an improper classification, or upon an assessment of any of his property in excess of its fair cash value, they shall make a reasonable abatement; provided, however, that a person aggrieved by a tax assessed upon him under section seventy-five or section seventy-six or reassessed upon him under section seventy-seven may apply for such abatement at any time within three months after the bill or notice of such assessment or reassessment is first sent to him. A tenant of real estate paying rent therefor and under obligation to pay more than one-half of the taxes thereon may apply for such abatement. If a person other than the person to whom a tax on real estate is assessed is the owner thereof, or has an interest therein, or is in possession thereof, and pays the tax, he may thereafter prosecute in his own name any application, appeal or action provided by law for the abatement or recovery of such tax, which after the payment thereof shall be deemed for the purposes of such application, appeal or action, to have been assessed to the person so paying the same. The holder of a mortgage on real estate who has paid not less than one-half of the tax thereon may during the period beginning September twentieth and ending October first of the year to which the tax relates apply in the manner above set forth for an abatement of such tax provided the person assessed has not previously applied for abatement of such tax, and thereupon the right of the person assessed to apply shall cease and determine. The holder of a mortgage so applying for abatement may thereafter prosecute any appeal or action provided by law for the abatement or recovery of such tax in the same manner and subject to the same conditions as a person aggrieved by a tax assessed upon him.

Notwithstanding any other provision of this section, a person who acquires title to real estate after January first in any year, shall for the purposes of this section be treated as a person upon whom a tax has been assessed.

An application for exemption under clause Seventeenth, Seventeenth C, Seventeenth D, Eighteenth, Twenty-second, Twenty-second A, Twenty-second B, Twenty-second C, Twenty-second D, Twenty-second E, Thirty-seventh, Thirty-seventh A, Forty-first, Forty-first B, Forty-first C, Forty-second, Forty-third and Fifty-second of section five may be made on or before December fifteenth of the year to which the tax relates, or if the bill or notice is first sent after September fifteenth of such year, within three months after the bill or notice is so sent.

If any application for abatement of tax is, after the period or date prescribed by this section, delivered by United States mail, or by such alternative private delivery service as the commissioner of revenue may by regulation permit, to the assessors, the date of the United States postmark, or other substantiating date mark permitted by regulation of the commissioner of revenue, affixed on the envelope or other appropriate wrapper in which such application is mailed or delivered shall be deemed to be the date of delivery, if such application was mailed in the United States in an envelope or other appropriate wrapper, first class postage prepaid, or delivered to such alternative private delivery service, properly addressed to the assessors. As used in this section, "United States postmark" shall mean only a postmark made by the United States post office.

Amended by St.1933, c. 165, § 1; St.1933, c. 254, § 43; St.1933, c. 266, § 1; St.1934, c. 136, § 2; St.1935, c. 187, § 1; St.1939, c. 250, § 1; St.1943, c. 166, § 1; St.1945, c. 621, § 4; St.1946, c. 199, § 1; St.1963, c. 125; St.1965, c. 615, § 2; St.1974, c. 831, § 4; St.1977, c. 198; St.1978, c. 580, § 33; St.1985, c. 300, § 2; St.1987, c. 758, § 5; St.1989, c. 341, § 38; St.1993, c. 110, § 116; St.1996, c. 426, § 2; St.2000, c. 324, § 2.

Historical and Statutory Notes

St.1785, c. 50, § 10.
R.S.1836, c. 7, §§ 37, 41.
G.S.1860, c. 11, §§ 43, 47.
St.1877, c. 160, § 2.
P.S.1882, c. 11, §§ 69, 74.
St.1888, c. 315.
R.L.1902, c. 12, § 73.
St.1909, c. 490, pt. 1, § 72.
St.1926, c. 71, § 2.

§ 59A. Abatements for purpose of continuing environmental cleanup on sites zoned for commercial or industrial use where there has been a release of oil or hazardous material

Municipalities may establish, relative to sites or portions of sites from or at which there has been a release of oil or hazardous material, an agreement between the city or town and any eligible person, as defined in section 2 of chapter 21E, regarding

the abatement of outstanding interest, penalties, and payment of real estate tax obligations on said sites or portions of sites; provided, however, that said sites or portions of sites are zoned for commercial or industrial uses by the municipality in which said sites or portions of sites exist. Such agreement, for the purpose of continuing environmental cleanup on such sites and redevelopment in such communities, shall include, but shall not be limited to, the amount outstanding, the per cent of interest to accrue if determined applicable by the parties, the description of quantifiable monthly payments, the inception date of such payments, the date of the final payment, late penalties, and any other contractual obligations arranged between the parties. The terms of repayment shall be set at the discretion of the municipality and shall be included in the agreement between the parties. A city or town that accepts this section shall adopt an ordinance or by-law specifying the method for negotiating and approving agreements under this section. Copies of each such agreement shall be signed by the municipal officer required by the ordinance or by-law and by the owner of the property in question, notarized, attested to by the city or town clerk, and provided to the department of environmental protection, the federal Environmental Protection Agency, the commissioner, the city council or board of selectmen, and the owners of the property in question. This section shall take effect in any city or town only upon its acceptance by such city or town.

Added by St.1998, c. 206, § 33. Amended by St.1999, c. 158, § 3.

§ 60. Records of abatements

Every board of assessors shall record all abatements of taxes. The record of abatement of the whole or any part of any tax shall be signed by a majority of the board and shall show plainly the following details:

First, The name or title in which the tax stands assessed.

Second, The year in which the tax was assessed.

Third, The total amount of the tax.

Fourth, The date when the abatement was made.

[There is no Fifth.]

Sixth, The sum abated on personal estate.

Seventh, The sum abated on real estate.

Eighth, The total sum abated.

Ninth, In case of an abatement to put into effect a statutory exemption, exact reference to the statutory provision under which the exemption is granted.

The assessors shall forthwith upon making an abatement furnish the tax collector with a copy thereof.

The records which boards of assessors are required to keep pursuant to this section shall be kept, in the order in which such abatements of taxes are granted, in a book or set of books provided for the purpose and in such form as the commissioner may prescribe. Such book or books, or copies thereof, shall be open to public inspection. Every board of assessors shall at the request of any person furnish one or more copies of any record required by this section to be kept, upon the payment in advance of a fee approximating the cost of such copy or copies.

Applications for abatement or exemption under this chapter shall, except in proceedings before the county commissioners, the appellate tax board or a court of the commonwealth, be open only to the inspection of the assessors, the commissioner, the deputies, clerks and assistants of either the assessors or the commissioner and such other officials or designated private auditors of the commonwealth or of its political subdivisions as may have occasion to inspect such applications in the performance of their official, contractual or designated duties. For purposes of this section, a designated private auditor shall be an individual, corporation or other legal entity proficient in auditing selected by the director of accounts or any city or town to perform an audit which includes the assessing department of a city or town under any legal authority, including an audit under sections forty or forty-two of chapter forty-four, or an investigation under section forty-six A of chapter forty-four.

Amended by St.1941, c. 209; St.1945, c. 620; St.1963, c. 160, § 23; St.1988, c. 43, § 5.

Historical and Statutory Notes

St.1909, c. 517, § 1.
St.1923, c. 18.

§ 61. Conditions of abatement

A person shall not have an abatement of a tax imposed upon his personal property subject to taxation, except as otherwise provided, unless he has brought in to the assessors a list of his personal estate as required by section 29 and complied with any requests by the assessors to examine books,

papers, records and other data under section 31A. If such a list of his personal estate is not filed within the time specified in the notice required by said section 29 or the person has not complied with any requests by the assessors to examine books, papers, records and other data under said section 31A, no part of the tax assessed on the personal estate shall be abated unless the applicant shows to the assessors a reasonable excuse for the delay, or unless such tax exceeds by fifty per cent the amount which would have been assessed on such estate, if the list had been seasonably brought in, and in such case only the excess over such fifty per cent shall be abated. A person applying for an abatement of a tax on real estate may have an abatement although no list of the owner's estate was brought in as required by the said notice; provided, that in any application for an abatement of such a tax the applicant shall include a sufficient description in writing of the particular real estate as to which an abatement is requested.

Amended by St.1933, c. 165, § 2; St.2010, c. 188, §§ 50, 51, eff. July 27, 2010.

Historical and Statutory Notes

St.1785, c. 50, § 9.
R.S.1836, c. 7, § 40.
St.1853, c. 319, § 3.
St.1857, c. 306, § 3.
G.S.1860, c. 11, § 46.
St.1865, c. 121.
St.1877, c. 160, § 1.
P.S.1882, c. 11, §§ 38, 72, 73.
St.1888, c. 315.
St.1894, c. 354.
R.L.1902, c. 12, § 74.
St.1909, c. 490, pt. 1, § 73.
St.1909, c. 517, § 2.
St.1918, c. 50, § 2.
St.1931, c. 150, § 2.

§ 61A. Discovery; failure to comply

A person applying for an abatement of a tax on real estate or personal property shall, upon request, exhibit to the assessors the property to which the application for abatement relates and if required by said assessors, shall exhibit and identify such property, and further, shall, upon request, furnish under oath such written information as may be reasonably required by the board of assessors to determine the actual fair cash valuation of the property to which the application for abatement relates including, but not limited to, income and rents received, and the expenses of maintaining such property. Failure of the applicant to comply with the provisions of this section within thirty days after such request shall bar him from any statutory appeal under this chapter unless the applicant was unable to comply with such request for reasons beyond his control or unless he attempted to comply in good faith.

Added by St.1935, c. 276, § 2. Amended by St.1968, c. 292; St.1989, c. 718, § 3.

§ 62. Costs; prepayment

A person applying for an abatement shall pay the legal costs accruing before it is made.

Historical and Statutory Notes

R.S.1836, c. 7, § 38.
G.S.1860, c. 11, § 44.
P.S.1882, c. 11, § 70.
R.L.1902, c. 12, § 75.
St.1909, c. 490, pt. 1, § 74.

§ 63. Notice of decision

Assessors shall, within ten days after their decision on an application for an abatement, send written notice thereof to the applicant. If the assessors fail to take action on such application for a period of three months following the filing thereof, they shall, within ten days after such period, send the applicant written notice of such inaction. Said notice shall indicate the date of the decision or the date the application is deemed denied as provided in section sixty-four, and shall further state that appeal from such decision or inaction may be taken as provided in sections sixty-four to sixty-five B, inclusive.

Amended by St.1943, c. 79; St.1974, c. 288; St.1989, c. 718, § 5.

Historical and Statutory Notes

St.1890, c. 127, § 6.
R.L.1902, c. 12, § 76.
St.1909, c. 490, pt. 1, § 75.

§ 64. Appeals; county commissioners; appellate tax board

A person aggrieved by the refusal of assessors to abate a tax on personal property at least one-half of which has been paid, or a tax on a parcel of real estate, may, within three months after the date of the assessors' decision on an application for abatement as provided in section sixty-three, or within three months after the time when the application for abatement is deemed to be denied as hereinafter provided, appeal therefrom by filing a complaint with the clerk of the county commissioners, or of the board authorized to hear and determine such complaints, for the county where the property taxed lies, and if on hearing the board finds that the property has been overrated and that the complainant has complied with all applicable provi-

sions of law, it shall make a reasonable abatement and an order as to cost; provided, that if the tax due for the full fiscal year on a parcel of real estate is more than $3,000, said tax shall not be abated unless the full amount of said tax due has been paid without the incurring of any interest charges on any part of said tax pursuant to section fifty-seven of chapter fifty-nine of the General Laws; and provided further, that for the purposes of this section a sum not less than the average of the tax assessed, reduced by abatements, if any, for the three years next preceding the year of assessment may be deemed to be the tax due, provided that a year in which no tax was due shall not be used in computing such sum and if no tax was due in any of the three next three preceding years, the sum shall be the full amount of said tax due, but the provisions of said section fifty-seven of said chapter fifty-nine shall apply to the amount of the tax deemed to be due and the payment of said sum without incurring any interest charges on any part thereof shall be deemed to be the payment of the tax. No appeal may be taken under this section with respect to a tax on property in Revere or Winthrop. Whenever a board of assessors, before which an application in writing for the abatement of a tax is or shall be pending, fails to act upon said application, except with the written consent of the applicant, prior to the expiration of three months from the date of filing of such application it shall then be deemed to be denied and the assessors shall have no further authority to act thereon; provided, that during the period allowed for the taking of an appeal including instances where the application for abatement has been denied, the assessors may by agreement with the applicant abate the tax in whole or in part in final settlement of said application, and shall also have the authority granted to them by section seven of chapter fifty-eight A to abate, in whole or in part, any tax as to which an appeal has been seasonably taken. If the list of personal property required to be brought in to the assessors was not brought in within the time specified in the notice required by section twenty-nine, no tax upon personal property shall be abated unless the board appealed to finds good cause for this delay or unless the assessors have so found as provided in section sixty-one, or unless such tax exceeds by fifty per cent the amount which would have been assessed on such estate, if the list had been seasonably brought in, and in such case only the excess over such fifty per cent shall be abated. A tax or assessment upon real estate may be abated although no list of property was brought in within the time specified by the notice required by section twenty-nine; provided, that the application for an abatement of such tax or assessment included a sufficient description of the particular real estate as to which an abatement is requested.

Upon the filing of a complaint under this section the clerk of the county commissioners or the board authorized to hear and determine the same shall forthwith transmit a certified copy of such complaint to the assessors and the assessors or the city solicitor or town counsel may within thirty days after receipt of said copy give written notice to said clerk and to the complainant that the town elects to have the same heard and determined by the appellate tax board. If the assessed valuation of the property on which the tax complained of was assessed does not exceed twenty thousand dollars and such property is occupied in whole or in part by the complainant as his dwelling, contains not more than three units designed for dwelling purposes and is in no part used for any other purposes, or if the assessed valuation of the property on which the tax complained of was assessed does not exceed five thousand dollars and such property is within the class of tangible personal property described in clause twentieth of section five of chapter fifty-nine, the party making the election under this section to have the complaint heard and determined by the appellate tax board shall, at the time of making such election, pay to the clerk of the county commissioners a transfer fee of two dollars. Thereupon, the clerk of the county commissioners or of the board authorized to hear and determine such complaints shall forward the transfer fee and all papers with respect to such complaint then in the files of the county commissioners or other such board to the clerk of the appellate tax board and proceedings with respect to such complaint shall thenceforth be continued as provided in chapter fifty-eight A under the formal procedure, except that complaints requiring the transfer fee of two dollars shall be continued under the informal procedure under said chapter fifty-eight A, unless the complainant files an election with the clerk of the appellate tax board that the complaint be heard under the formal procedure within ten days after receiving the notice as hereinafter provided that the complaint has been transferred to the appellate tax board. Upon the transfer of such complaint to said board the clerk of said board shall send notice by registered mail to the complainant that such complaint has been transferred, and the complainant shall, within ten days after receiving such no-

tice, pay to said board the entry fee as required by section seven of said chapter fifty-eight A, except that the complainant shall not be required to pay any entry fee if the provisions of this section relative to the payment of the transfer fee have been complied with. Upon receipt of the entry fee or transfer fee herein provided for, the clerk of the appellate tax board shall notify the respondent board of assessors that a complaint is pending against it. In case the respondent desires to answer, it shall file an answer within thirty days of the receipt of notice of the pendency of the complaint or within such further time as the board may allow. If upon hearing it appears that the complainant has complied with all applicable provisions of law and the appellate tax board finds that the complainant is duly entitled to an abatement, it may grant him such reasonable abatement as justice may require, and shall enter an order directing the treasurer of the town to refund said amount, if the tax sought to be abated has been paid, together with all charges and interest at eight per cent on the amount of the abatement from the date of the payment of the tax. The board may make such order with respect to the payment of costs as justice may require.

If any complaint under this section is, after the period or date prescribed by this section, delivered by United States mail, or by such alternative private delivery service as the county commissioners or the board authorized to hear and determine such complaints, may permit, to the clerk of the county commissioners, or to such board, the date of the United States postmark, or other substantiating date mark permitted by the county commissioners or such board, affixed on the envelope or other appropriate wrapper in which such complaint is mailed or delivered shall be deemed to be the date of delivery, if such complaint was mailed in the United States in an envelope or such appropriate wrapper, first class postage prepaid, or delivered to such alternative private delivery service, properly addressed to the county commissioners or the board authorized to hear and determine such complaints. As used in this section, "United States postmark" shall mean only a postmark made by the United States post office.

Amended by St.1933, c. 130, § 1; St.1935, c. 218, § 2; St.1937, c. 400, § 6; St.1938, c. 478, § 1; St.1939, c. 31, § 6; St.1939, c. 366, § 2; St.1943, c. 248; St.1945, c. 621, § 5; St.1956, c. 544; St.1965, c. 597, § 2; St.1973, c. 664, § 1; St.1975, c. 677, § 1; St.1978, c. 580, § 34; St.1982, c. 653, § 6; St.1983, c. 72, § 4; St.1989, c. 718, § 6; St.1998, c. 485, §§ 3, 4; St.2000, c. 324, § 3.

Historical and Statutory Notes

St.1785, c. 50, §§ 9, 10.
R.S.1836, c. 7, §§ 39, 40.
St.1853, c. 319, § 3.
St.1857, c. 306, § 3.
G.S.1860, c. 11, §§ 45, 46.
St.1870, c. 337, § 2.
P.S.1882, c. 11, §§ 71, 72.
St.1882, c. 218.
R.L.1902, c. 12, § 77.
St.1909, c. 490, pt. 1, § 76.
St.1930, c. 416, § 13.
St.1931, c. 150, § 3.

§ 65. Appeals; appellate tax board

A person aggrieved as aforesaid with respect to a tax on property in any municipality may, subject to the same conditions provided for an appeal under section sixty-four, appeal to the appellate tax board by filing a petition with such board within three months after the date of the assessors' decision on an application for abatement as provided in section sixty-three, or within three months after the time when the application for abatement is deemed to be denied as provided in section sixty-four. Such appeal shall be heard and determined by said board in the manner provided by chapter fifty-eight A. The board may enter such order as justice may require in the manner provided in the preceding section with respect to complaints removed from the county commissioners. The remedy provided by this section shall be in the alternative for that provided by section sixty-four in case of a tax on property in any municipality other than Revere or Winthrop.

If any such petition is, after the period or date prescribed by this section, delivered by United States mail, or by such alternative private delivery service as the appellate tax board may by rule permit, to such board, the date of the United States postmark, or other substantiating date mark permitted by rule of such board, affixed on the envelope or other appropriate wrapper in which such petition is mailed or delivered shall be deemed to be the date of delivery, if such petition was mailed in the United States in an envelope or other appropriate wrapper, first class postage prepaid, or delivered to such alternative private delivery service, properly addressed to the board. As used in this section, "United States postmark" shall mean only a postmark made by the United States post office.

Amended by St.1933, c. 130, § 2; St.1933, c. 167, § 1; St.1938, c. 478, § 2; St.1939, c. 31, § 7; St.1945, c. 621, § 6; St.1975, c. 677, § 2; St.1989, c. 718, § 7; St.2000, c. 324, § 4.

Historical and Statutory Notes

St.1890, c. 127, §§ 1, 2, 4.
R.L.1902, c. 12, § 78.
St.1909, c. 490, pt. 1, § 77.
St.1918, c. 257, § 39.
St.1919, c. 5.
St.1920, c. 2.
St.1930, c. 416, § 14.

§ 65A. Sale or taking real property for taxes; effect upon abatement

No sale or taking of real property for non-payment of taxes shall affect the hearing of any application for abatement of such taxes duly made under any provision of this chapter prior to the institution of proceedings for such sale or taking, or the institution, hearing or disposition of any proceeding arising from such application, nor shall the addition of any subsequent taxes to a tax title account affect the hearing of any application for abatement of such subsequent taxes duly made under any provision of this chapter prior to such addition being made, or the institution, hearing or disposition of any proceeding arising from such application. If a final finding be made that the person aggrieved by the assessment of such taxes is entitled to an abatement, he shall be granted such reasonable abatement as justice may require. In case the purchaser of the property is other than the town, the person so aggrieved shall be entitled to relief in the same manner and in the same amount, including interest and charges, as if the payment made to the town for the purchase of the property had been made as a direct payment of the taxes, interest and charges for the non-payment of which the property was sold. In case the property is taken or purchased by the town, the person so aggrieved shall be entitled to have the amount to be paid or tendered in redemption under the provisions of section sixty-two of chapter sixty reduced to the amount which would have been required to have been so paid or tendered if the abatement or abatements had become effective before the taking or purchase or addition to the tax title account.

Added by St.1932, c. 218, § 1. Amended by St.1933, c. 325, § 18.

§ 65B. Appeals; inability to pay balance of tax

A person who has filed an appeal from the refusal of assessors to abate a tax on a parcel of real estate under the provisions of section sixty-five who has paid either a sum not less than one half of the amount of such tax or a sum not less than one half the amount deemed to be such tax under the provisions of section sixty-four without incurring any interest charges on either of such payments pursuant to section fifty-seven of chapter fifty-nine who claims to be unable presently to pay the amount of tax remaining unpaid, may, on or before the last date for payment of said tax without incurring interest, file a motion alleging that the appellant is unable presently to pay such amount of tax and that he has otherwise complied with the provisions of section sixty-four relative to payment of such tax and moving that he be excused from the requirement that the balance of the tax be paid or that the time for payment thereof be extended. If upon the hearing of said motion supported by evidence the board finds the allegations to be true, the board, by order, may grant the motion upon such conditions as may be imposed therein, which may or may not require such petitioner to pay, in whole or by installments, the amount of the tax remaining unpaid, as a prerequisite to any hearing on the merits of the appeal. If the complainant fails to comply with any of the conditions imposed in said order an appeal may, upon motion, be dismissed. If the complainant complies with the conditions imposed in said order, the appeal thereafter shall be heard and determined by said board in the manner provided by chapter fifty-eight A. The board may enter such order as justice may require in the manner provided in section sixty-four with respect to complaints removed from the county commissioners.

Added by St.1938, c. 478, § 3. Amended by St.1945, c. 621, § 7; St.1975, c. 677, § 3.

§ 65C. Late appeals

If a person has, by reason of the failure of the board of assessors to act upon an application for abatement, a right of appeal to the appellate tax board under section sixty-five but the board of assessors failed to send written notice of such inaction to the applicant within ten days as provided in section sixty-three and by mistake or accident such person fails to enter such appeal in said board within the time prescribed by section sixty-five, said board, upon petition filed within two months after the appeal should have been entered, and after notice and hearing, and upon terms, may allow such person to enter his appeal.

Added by St.1953, c. 476, § 1. Amended by St.1975, c. 677, § 4; St.1989, c. 718, § 8.

§ 65D. Mistake in payments; appeal; abatement

If a person having an interest in a parcel of real estate files with the appellate tax board within the

time prescribed by section sixty-five an appeal with respect to a tax assessed thereon, after having paid on account of such tax the amount prescribed by section sixty-five B but by reason of mistake not having paid the amount required under section sixty-five, said board, upon motion filed within two months after the discovery of such mistake, may grant upon such appeal such abatement, if any, as the assessors by agreement with such person may determine.

Added by St.1956, c. 452, § 1.

§§ 66 to 68A. Repealed, 1930, 416, Sec. 2

§ 69. Reimbursement; interest

A person whose tax has been abated shall, if the tax has been paid, be reimbursed by the town to the amount of the abatement allowed, including all interest and all charges paid therewith except legal costs paid as provided in section sixty-two, with interest on the amount so abated at eight per cent from the time of payment or the due date of the tax, whichever is later. No refund shall be paid on account of an abatement when there remains an outstanding balance of the tax to which the abatement relates, nor shall any interest be paid on account of an abatement for any period during which any part of the abated tax, net of the amount of the abatement, was outstanding.

Amended by St.1935, c. 218, § 3; St.1939, c. 366, § 3; St.1965, c. 597, § 3; St.1973, c. 689; St.1976, c. 250, § 2; St.1977, c. 585; St.1980, c. 406, § 1; St.1988, c. 43, § 6.

Historical and Statutory Notes

St.1785, c. 50, § 10.
R.S.1836, c. 7, § 42.
G.S.1860, c. 11, § 48.
P.S.1882, c. 11, § 75.
St.1894, c. 207.
St.1895, c. 75.
R.L.1902, c. 12, § 82.
St.1909, c. 490, pt. 1, § 81.

§ 70. Certificate of abatement

A person whose tax has been abated shall be entitled to a certificate thereof from the assessors, clerk of the commissioners or other proper officer.

Historical and Statutory Notes

R.S.1836, c. 7, § 43.
G.S.1860, c. 11, § 49.
P.S.1882, c. 11, § 76.
R.L.1902, c. 12, § 83.
St.1909, c. 490, pt. 1, § 82.

§ 70A. Procedure after abatement

Whenever upon application for abatement or otherwise any tax, assessment, rate or charge assessed by a board or officer of a town, or any interest thereon or costs relative thereto, is finally abated in whole or in part by any court or officer, or by any board, which latter term as used in this sentence shall include the county commissioners and the appellate tax board, the officer or the secretary, clerk or similar official of the board assessing such tax, assessment, rate or charge shall forthwith give notice of such abatement to the collector and to the auditor, accountant or similar official. If the assessment was made by a board or officer other than the assessors and the tax, assessment, rate, charge, costs or interest is part of an annual tax, such notice shall also be given to the assessors. Upon receipt of such notice, the collector shall make due entry of the abatement in his books, except where the tax, assessment, rate or charge is an item in a tax title account set up under section fifty of chapter sixty, in which case he shall forthwith transmit such notice to the treasurer, who shall forthwith enter the abatement on the tax title account, and the treasurer shall thereby be relieved of further responsibility with respect to the amount abated. Whenever any tax, assessment, rate, charge, costs or interest constituting an item in a tax title account is abated in whole or in part, the account, if any, set up on the books of the town showing the amount of tax title revenue available when collected shall be reduced accordingly. Whenever any tax, which word as used in this sentence shall be construed to mean the tax assessed under this chapter and not to include any assessment, rate, charge, costs or interest added thereto, is abated in whole or in part, whether or not such tax has been collected and whether or not such tax is secured by a tax title held by the town, the amount of the abatement shall be charged against the overlay of the year of such tax.

Added by St.1945, c. 351, § 1.

§ 71. Uncollectible taxes; abatement

If a collector is satisfied that a tax upon personal property, or any portion of said tax, committed to him or to any of his predecessors in office for collection, cannot be collected by reason of the death, absence, poverty, insolvency, bankruptcy or other inability of the person assessed to pay, he shall notify the assessors thereof in writing, on oath, stating why such tax cannot be collected. The assessors shall act on such notification within

thirty days after its receipt and, after due inquiry, may abate such tax or any part thereof, and shall certify such abatement in writing to the collector; and said certificate shall discharge the collector from further obligation to collect the tax so abated.
Amended by St.1963, c. 160, § 24.

Historical and Statutory Notes

St.1878, c. 77.
St.1879, c. 43.
P.S.1882, c. 11, § 77.
R.L.1902, c. 12, § 84.
St.1902, c. 91.
St.1909, c. 490, pt. 1, § 83.
St.1913, c. 226.
St.1928, c. 1.

§ 72. Land of insufficient value to meet charges; abatement

Whenever the commissioner deems any lands to have been assessed at a valuation insufficient to meet the charges and expenses of collecting the tax thereon, he may in writing authorize the assessors to abate the tax of their own motion as a tax which ought not to have been assessed. The authorization shall form a part of the assessors' records of abatements.

Historical and Statutory Notes

St.1915, c. 56, § 4.

§ 72A. Unpaid real estate taxes; abatement

Upon the purchase, other than under eminent domain, or acceptance of a gift of land located therein by a town, the unpaid real estate taxes shall be adjusted as of the date title passes. The board or department having control of such land may request in writing that the unpaid taxes on said land for the balance of the fiscal year be abated; provided, however, that if the land is so acquired between January second and June thirtieth, inclusive, such board or department may request that the tax assessed against the land for the ensuing fiscal year also be abated. Upon receipt of such request said taxes shall be so abated. Said request shall form a part of the assessors' records of abatement.
Added by St.1968, c. 253. Amended by St.1983, c. 72, § 5.

§ 73. Repealed, 1955, 344, Sec. 2

§ 74. Corporations liable to franchise taxes; abatement of local taxes; notice

Whenever an abatement is finally made to any corporation taxable under chapter sixty-three upon any tax assessed by the assessors of any town, upon or in respect of works, structures, real estate, motor vehicles, trailers, machinery, poles, underground conduits, wires and pipes, the assessors, commissioners, appellate tax board or court granting such abatement shall forthwith notify the commissioner thereof, and shall state in such notice what sum was determined by such assessors, commissioners, appellate tax board or court to have been the full and fair cash value of such works, structures, real estate, machinery, poles, underground conduits, wires and pipes on the first day of January on which the tax so abated was originally assessed or to have been the proper value of any such motor vehicle or trailer owned by such corporation and assessed under chapter sixty A.
Amended by St.1933, c. 254, § 45; St.1939, c. 24, § 3; St.1945, c. 137.

Historical and Statutory Notes

St.1904, c. 442, § 1.
St.1909, c. 440, § 2.
St.1909, c. 490, pt. 1, § 84.
St.1914, c. 198, § 5.
St.1926, c. 279, § 2.
St.1928, c. 379, § 6.

§ 75. Omitted property; assessments

If a parcel of real property or the personal property of a person has been unintentionally omitted from the annual assessment of taxes due to a clerical or data processing error or some other good faith reason or, if the personal property of a person was omitted from the annual assessment of taxes but discovered upon an examination of the books, papers, records and other data under section 31A, the assessors shall, in accordance with any rules, regulations and guidelines as the commissioner may prescribe, assess such person for such property. Except for personal property found after an examination under said section 31A which shall be made not later than 3 years and 6 months after the date the true list in which such property should have been returned was due or not later than 3 years and 6 months after the date the return was filed, whichever is later, no such assessment shall be made later than June 20 of the taxable year or 90 days after the date on which the tax bills were mailed, whichever is later. The assessors shall annually, not later than June 30 of the taxable year or 100 days after the date on which the tax bills were mailed if mailed after March 22, return to the commissioner a statement showing the amounts of additional taxes so assessed. The taxes so assessed shall be entered on the tax list of the collector, who shall collect and pay over the same. The assessors

shall also deliver to the collector their warrants for the collection of all taxes so entered on the tax list. Such additional assessment shall not render the tax of the town invalid although its amount, in consequence thereof, shall exceed the amount authorized by law to be raised.

Amended by St.1934, c. 104; St.1946, c. 339; St.1977, c. 166, § 1; St.1984, c. 53, § 1; St.1989, c. 398, § 1; St.2010, c. 188, § 52, eff. July 27, 2010.

Historical and Statutory Notes

St.1868, c. 320.
St.1873, c. 272.
P.S.1882, c. 11, § 78.
St.1886, c. 85.
St.1888, c. 362.
R.L.1902, c. 12, § 85.
St.1909, c. 490, pt. 1, § 85.
St.1911, c. 89.

§ 76. Revision of valuation or classification

If any property subject to taxation has been unintentionally valued or classified in an incorrect manner due to clerical or data processing error or other good faith reason or due to discovery upon an examination of the books, papers, records and other data under section 31A that the property was not accurately or properly reported, the assessors shall revise its valuation or classification and shall assess any additional taxes resulting from such revision in the manner and within the time provided by section seventy-five and subject to its provisions.

Amended by St.1978, c. 580, § 35; St.1989, c. 398, § 2; St.2010, c. 188, § 53, eff. July 27, 2010.

Historical and Statutory Notes

St.1910, c. 260.

§ 77. Reassessments

Every tax except a poll tax,[1] which is invalid by reason of error or irregularity in the assessment and every tax on land which, by reason of such error or irregularity, does not constitute a valid lien on such land, may, if it has not been paid in full, or if it has been recovered back, or if it has been paid under such circumstances that it can be recovered back, be reassessed by the assessors for the time being, to the just amount to which, on the estate on which, and to the person to whom, it ought at first to have been assessed, whether such person has continued an inhabitant of the town or not. A reassessed tax on land shall be a lien thereon for the same period and under the same conditions as the original tax, if it had constituted a valid lien, would be, except where the reassessment is made after such period has expired. The reassessment of a tax on land shall not be defeated by an alienation of such land; but a reassessed tax on land shall be a lien thereon only as herein provided.

Amended by St.1945, c. 333.

[1] Abolished

Historical and Statutory Notes

St.1859, c. 118, § 1.
G.S.1860, c. 11, § 53.
St.1881, c. 304, § 7.
P.S.1882, c. 11, § 79.
R.L.1902, c. 12, § 86.
St.1909, c. 490, pt. 1, § 86.
St.1915, c. 237, § 17.
St.1918, c. 257, § 47.
St.1919, c. 5.
St.1920, c. 2.

§ 78. Collection of reassessed taxes

Taxes reassessed under section seventy-seven shall be committed to, and collected and paid over by, the collector for the time being, in the same manner as other taxes, except that the name of the person to whom they were originally assessed shall be stated in the tax list; and the bond of such collector shall apply to such reassessed taxes. Taxes so reassessed shall bear interest as provided in section fifty-seven with respect to real estate and personal property taxes generally.

Amended by St.1941, c. 258, § 5; St.1969, c. 849, § 70.

Historical and Statutory Notes

St.1870, c. 394.
P.S.1882, c. 11, § 80.
R.L.1902, c. 12, § 87.
St.1909, c. 490, pt. 1, § 87.

§ 78A. Real estate divided after assessment; apportionment of tax

If real property is divided by sale, mortgage, upon a petition for partition or otherwise after January first and such division has been duly recorded in the registry of deeds, the assessors, at any time before said real property has been advertised for sale for nonpayment of taxes, upon the written request of the owner or mortgagee of any portion thereof, shall apportion said tax, with costs and interest upon the several parcels thereof, in proportion to the value of each, and only the portion of said tax, interest and costs so apportioned upon any such parcel shall continue to be a lien upon it; and the owners or mortgagees shall be liable only for the tax apportioned upon the parcel owned in whole or in part by them respectively. If a tax so apportioned upon any parcel remains unpaid after such a commitment to the collector, it

may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the collector either in his own name or in the name of the town against said owners and mortgagees. Assessors shall send notice of the request for such apportionment and of the time appointed therefor, by mail, to every person interested in said real property whose address is known to them.

Added by St.1979, c. 797, § 18. Amended by St.1980, c. 261, § 15; St.1992, c. 133, § 386.

§§ 79, 80. Repealed, 1978, 580, Sec. 36

§ 81. Appeal from apportionment

A person aggrieved by any action of the assessors in making such apportionment may within seven days thereafter appeal in like manner as in case of an overassessment, and the decision upon such appeal shall be final.

Historical and Statutory Notes

St.1878, c. 182, § 3.
P.S.1882, c. 11, § 83.
R.L.1902, c. 12, § 90.
St.1909, c. 490, pt. 1, § 90.

§ 82. Validity of excessive assessments

If, by reason of an erroneous or illegal assessment or apportionment of taxes, a person is assessed more than his due proportion, the tax and assessment shall be valid except as to the illegal excess.

Historical and Statutory Notes

St.1859, c. 118, § 4.
G.S.1860, c. 11, § 54.
P.S.1882, c. 11, § 84.
R.L.1902, c. 12, § 91.
St.1909, c. 490, pt. 1, § 91.

§ 83. Corporations having capital stock divided into shares; returns by assessors

[First paragraph effective for tax years beginning on or after January 1, 2009. See 2008, 173, Sec. 101.]

The assessors shall, upon request of the commissioner for detailed information concerning corporations named by the commissioner, except banks of issue and deposit, having a capital stock divided into shares, organized for the purposes of business or profit and established in their respective towns or owning real estate therein, provide a detailed statement of the works, structures, real estate, machinery, poles, underground conduits, wires and pipes owned by each of said corporations and situated in such town, with the value thereof, on January first preceding, and the amount at which the same is assessed in said town for the then current year.

The assessors shall also, when requested, return to the commissioner a detailed statement of all motor vehicles and trailers owned by each such corporation and the amount at which each such vehicle or trailer is assessed under chapter sixty A for said year. An assessor neglecting to comply with this section within thirty days after said request shall be punished by a fine of one hundred dollars.

Amended by St.1933, c. 254, § 46; St.1939, c. 24, § 4; St.1958, c. 490, § 2; St.1968, c. 240; St.2008, c. 173, § 10, eff. July 3, 2008.

Historical and Statutory Notes

St.1864, c. 208, § 1.
St.1865, c. 283, §§ 1, 14.
P.S.1882, c. 11, §§ 86, 87.
R.L.1902, c. 12, § 93.
St.1904, c. 181.
St.1906, c. 271, § 11.
St.1909, c. 440, § 2.
St.1909, c. 490, pt. 1, § 93.
St.1913, c. 453, § 1.
St.1914, c. 198, §§ 2, 5.
St.1926, c. 279, § 3.
St.1928, c. 379, § 7.

§ 84. Repealed, 1985, 300, Sec. 3

§ 85. Repealed, 1945, 271

§ 86. Exempted property; returns by assessors

Assessors shall annually, on or before July first, forward to the commissioner a statement showing the whole amount of exempted property entered upon the valuation lists of their respective towns in accordance with section fifty-one, and the amount in each class, and stating separately the aggregate amount belonging to each class embraced in the clause third of section five.

Amended by St.1933, c. 254, § 49; St.1989, c. 397, § 3.

Historical and Statutory Notes

St.1874, c. 227, § 2.
St.1881, c. 284, § 4.
P.S.1882, c. 11, § 90.
St.1882, c. 217, § 3.
R.L.1902, c. 12, § 95.
St.1909, c. 490, pt. 1, § 95.

§ 87. Responsibility of assessors

Assessors shall not be responsible for the assessment of a tax assessed by them in pursuance of a

vote for that purpose, certified to them by the clerk or other proper officer of a city, town or district, except for the want of integrity and fidelity on their own part.

Historical and Statutory Notes

St.1823, c. 138, § 5.
St.1833, c. 166.
R.S.1836, c. 7, § 44.
G.S.1860, c. 11, § 51.
St.1872, c. 310.
P.S.1882, c. 11, § 94.
R.L.1902, c. 12, § 98.
St.1909, c. 490, pt. 1, § 98.

§ 88. Repealed, 1926, 29

§ 89. Compromise assessments; penalties

Whoever in any way directly or indirectly proposes or agrees to an assessment on any specific or limited amount less than that for which he may lawfully be taxed, with the purpose of making, or as an inducement to make, any particular place his residence or place of business, and an assessor guilty of making or assenting to any such proposal, shall be punished by a fine of one thousand dollars.

Historical and Statutory Notes

G.S.1860, c. 11, § 26.
P.S.1882, c. 11, § 26.
R.L.1902, c. 12, § 29.
St.1909, c. 490, pt. 1, § 29.
St.1918, c. 257, § 35.
St.1919, c. 5.
St.1920, c. 2.

§ 90. Evasion of taxation; penalties

Whoever willfully conceals, removes, transfers, or misrepresents any property to evade proper valuation, assessment or classification, or takes such other action with the intent so as to avoid taxation, shall be punished by a fine of not less than one thousand nor more than five thousand dollars; and he may be indicted either in the county where any of the acts or things made criminal by this section are done or in the county where he is liable to taxation.

Amended by St.1978, c. 580, § 37.

Historical and Statutory Notes

St.1864, c. 172, §§ 1, 2.
P.S.1882, c. 11, § 27.
R.L.1902, c. 12, § 30.
St.1909, c. 490, pt. 1, § 30.

§ 91. Fraudulent lists; penalties

Whoever, with intent to defeat or evade any provision of law as to the assessment or payment of taxes, delivers or discloses to an assessor or assistant assessor a false or fraudulent list, return or schedule of property, as and for a true list of his estate not exempt from taxation, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year.

Historical and Statutory Notes

St.1869, c. 190.
P.S.1882, c. 11, § 29.
R.L.1902, c. 12, § 32.
St.1909, c. 490, pt. 1, § 32.

§ 92. Taverns and boarding houses; refusing information; penalties

Keepers of taverns and boarding houses and masters and mistresses of dwelling houses, upon application of an assessor or assistant assessor of the town where their house is situated, shall give the names of all persons residing therein liable to be assessed for taxes. Every such keeper, master or mistress refusing to give such information, or knowingly giving false information, shall be punished by a fine of twenty dollars.

Historical and Statutory Notes

St.1837, c. 176.
G.S.1860, c. 11, § 21.
P.S.1882, c. 11, § 30.
R.L.1902, c. 12, § 33.
St.1909, c. 490, pt. 1, § 33.

§ 93. Failure to assess required taxes; penalties

An assessor who neglects to assess a state, county or district tax required by law shall be punished by a fine of not more than two hundred dollars.

Historical and Statutory Notes

St.1785, c. 50, § 4.
R.S.1836, c. 7, §§ 17, 18.
G.S.1860, c. 11, § 19.
P.S.1882, c. 11, § 36.
R.L.1902, c. 12, § 39.
St.1909, c. 490, pt. 1, § 39.

§ 94. Violation of Sec. 46; penalty

An assessor who neglects to comply with section forty-six shall be punished by a fine of not more than two hundred dollars.

Amended by St.1969, c. 532, § 4; St.1985, c. 300, § 4.

Historical and Statutory Notes

St.1861, c. 167, § 5.
P.S.1882, c. 11, § 56.
R.L.1902, c. 12, § 62.
St.1909, c. 490, pt. 1, §§ 61, 94.
St.1912, c. 312, § 3.

CHAPTER 60

COLLECTION OF LOCAL TAXES

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The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Definitions

Terms used in this chapter shall, unless other meaning is clearly apparent from the context, or unless inconsistent with the manifest intent of the legislature, be construed as follows:

"Affordable housing", housing with an affordable housing restriction recorded with the registry of deeds in the county where the property is located that requires the housing, for not less than 45 years, to be rented or owned by families and individuals whose income at initial occupancy is no more than 120 per cent of the area median income as determined by the federal department of housing and urban development guidelines and adjusted for family size and that thereafter such units shall be rented or sold, subject to such restrictions on appreciation as determined by the municipality to be reasonable and necessary to maintain long term affordability, to families or individuals at incomes of no more than 120 per cent of the area median income.

"Abandoned Property", property that is unused, unoccupied, and in such a deteriorated condition as to be uninhabitable or a danger to life or limb. As used in the above sentence unoccupied shall mean without lawful occupants.

"Collector", a person receiving a tax list and a warrant to collect the same.

"Publication", as applied to any notice, advertisement or other instrument, the publication of which is required by law, shall mean the act of printing it once in a newspaper published in the town, if any, otherwise in the county, where the land or other property to which the notice or other instrument relates is situated. The publication

shall be made at least fourteen days prior to the date stated for the occurrence of the event to which the publication relates.

"Registry of deeds", the registry of deeds for the county or district where the land taxed lies.

"Service", as applied to any notice, demand or other paper, shall, except as otherwise provided in section sixteen, mean delivering it or a copy to the person for whom it is intended, or leaving it or a copy at his last and usual place of abode or of business, or sending it or a copy by mail postpaid addressed to him at his last and usual place of abode or of business or, if such notice or other paper relates to taxes on land, posting it or a copy conspicuously in some convenient and public place and sending a copy by mail postpaid addressed to the person for whom it is intended at the town where such land lies. Such service shall be sufficient whether made by the then collector of taxes or by any predecessor.

The affidavit of the collector, deputy collector, sheriff, deputy sheriff or constable serving the notice, demand or other paper of the manner of service shall be kept on file in the office of the collector, and shall be prima facie evidence that the same was so served.

Amended by St.1933, c. 164, § 1; St.1943, c. 37, § 1; St.1973, c. 1215, § 3; St.2002, c. 2, § 2.

Historical and Statutory Notes

St.1785, c. 70, § 7.
R.S.1836, c. 8, § 24.
G.S.1860, c. 12, § 28.
St.1879, c. 69.
P.S.1882, c. 12, § 30.
St.1888, c. 390, § 35.
St.1892, c. 168.
St.1899, c. 425, §§ 1, 2.
St.1900, c. 290.
St.1901, c. 108.
St.1901, c. 150.
R.L.1902, c. 13, § 1.
St.1909, c. 490, pt. 2, § 1.
St.1918, c. 57.
St.1920, c. 255.

§ 2. Collection; payment over; returns; abatement

Every collector of taxes, constable, sheriff or deputy sheriff, receiving a tax list and warrant from the assessors, shall collect the taxes therein set forth, with interest, and pay over said taxes and interest to the city or town treasurer according to the warrant, and shall make written return thereof with his tax list and of his doings thereon at such times as the assessors shall in writing require. He shall also give to the treasurer an account of all charges and fees collected by him. He shall, once in each week or more often, pay over to the treasurer all money received by him for taxes and interest during the preceding week or lesser period together with any interest earned as a result of depositing said taxes and interest received.

In cities and towns which accept the provisions of this paragraph, no tax shall be collected if the actual tax due is less than ten dollars. If a tax committed to the collector is unpaid and is less than ten dollars, the collector shall request in writing that the assessors abate the tax. Upon receipt of such request, the assessors shall forthwith abate such tax and certify such abatement in writing to the collector. Said certificate of abatement shall discharge the collector from further obligation to collect the tax so abated.

Amended by St.1976, c. 4, § 31; St.1980, c. 97; St.1990, c. 281.

Historical and Statutory Notes

R.S.1836, c. 7, § 34; c. 8, §§ 1, 33.
G.S.1860, c. 12, § 1.
P.S.1882, c. 12, § 1.
St.1887, c. 110, § 4.
St.1888, c. 390, §§ 1, 6.
St.1897, c. 126, § 1.
R.L.1902, c. 13, § 2.
St.1909, c. 490, pt. 2, § 2.
St.1918, c. 257, § 41.
St.1919, c. 5.
St.1920, c. 2.
St.1921, c. 124.
St.1926, c. 65, § 3.
St.1931, c. 287.

§ 2A. Banks designated to receive tax payments; agreements

The collector, with the approval of the city council in cities, the board of selectmen in towns and the town council in municipalities having a town council form of government, is hereby authorized to enter into agreements for a term of not more than three years with one or more banks as defined in chapter one hundred and sixty-seven or a national banking association or a savings and loan association authorized to do business in the commonwealth designating such bank or banking association or a savings and loan association to receive payments of any taxes or other accounts payable to such city or town. Said agreement shall provide that any tax or other account received by a designated bank shall be processed and credited in the same manner as if such payment had been received in such day directly in the office of such tax collector. Any such payment shall be subject to the provisions of chapters forty-four, sixty and sixty A

of the General Laws. Any designated bank or national banking association or a savings and loan association shall indemnify said city or town and the officers, agents and employees thereof for any losses sustained by it or them on account of the negligence of such bank or national banking association or a savings and loan association or its failure to perform faithfully its duties and obligations pursuant to any such agreement.

Added by St.1980, c. 187. Amended by St.1981, c. 429.

§ 2B. Municipal taxes; collection services; agreements; compensation; reports; accounting

For the purposes of collecting municipal taxes, the collector is authorized to enter into agreements with one or more private persons, companies, associations or corporations doing business in the commonwealth to provide collection services with respect to unpaid municipal taxes, other than taxes for real property, for which a demand has already been made. In the event the local tax collector chooses to utilize the services of a collection agency or company, no such agreement shall be entered into unless proposals for the same have been invited by public notice published in at least one newspaper of local circulation once a week for at least two consecutive weeks, the last such publication to be at least one week prior to the time specified for the opening of said proposals. All such proposals shall be opened in public. The collector may reject any or all such proposals and may not accept an offer other than the lowest responsible bid unless the collector specifies the reasons therefor in writing. Any such agreement may provide, in the discretion of the collector, the manner in which the compensation for such services will be paid, which compensation cannot exceed the fees which would otherwise be due the collector under section fifteen, or one-third of the taxes collected on each tax due, exclusive of interest and charges, whichever is the greater. Such compensation which is greater than the amount of fees which are otherwise due the collector shall be added to the amount due and collected as a part thereof by the collection agency.

All amounts collected during the previous week by the collection agency shall be turned over to the collector together with an itemized statement of the taxes, interest and charges collected and so turned over.

Notwithstanding clause (13) of section twenty-one of chapter forty, or any ordinance or by-law to the contrary, the collector may authorize the treasurer to pay the compensation of the collection agent pursuant to the agreement with the collector, without further appropriation of the town; provided, however, that no such payment shall be made for any particular tax collection until the checks, if any, in payment therefor, have been honored.

The collector shall, on or before August first of each year, submit to the commissioner a report which lists all private persons, companies, associations or corporations with whom the collector has had agreements during the preceding fiscal year and an accounting of the amount of taxes collected by and the compensation paid to each such person, company, association or corporation. The commissioner may make, and from time to time revise, such rules, regulations and guidelines necessary to carry out the provisions of this section. The collection agency as a legal entity shall be bonded for the faithful performance of duty in the manner required of deputy collectors under section ninety-two, and such bond shall be deemed to include all agents or employees of said collection agency. This section shall be in addition to and separate from the process of appointing deputy collectors under section ninety-two, except that the collection agency shall be subject to the same limitations as collectors and deputy collectors and the same remedies for collection.

Added by St.1989, c. 729, § 1.

§ 2C. Assignment or transfer of tax receivables; conditions of sale; limitations

(a) For the purposes of this section, the following words shall have the following meaning:

"Appropriate financial official", the treasurer or collector of a municipality.

"Available funds deficit", the amount by which the funds certified by the director of accounts as available on July first next preceding the date of appropriation pursuant to section twenty-three of chapter fifty-nine, reduced by the amount of all intervening appropriations from available funds and increased by such amounts as the director may authorize, is less than zero.

"Commissioner", the commissioner of the department of revenue.

"Current tax receivables", tax receivables sold on or before the first annual anniversary of the date that the entire amount an individual taxpayer re-

ceivable or related tax could have been paid without interest or penalty.

"Entity", any individual or business subject to the provisions of chapter sixty-two or chapter sixty-three.

"Individual taxpayer receivable", tax receivables that are owed to a municipality for single or multiple tax years by or on behalf of a taxpayer that constitute all or part of the tax receivables sold by an appropriate financial official to a purchaser pursuant to the provisions of this section.

"Municipality", any city or town within the commonwealth.

"Parcel", any piece of real or personal property subject to real property taxes or excise taxes.

"Purchaser", a person or entity that purchases tax receivables pursuant to the provisions of this section; provided, however, that any such entity must be registered with the state secretary and must be a party in good standing.

"Related Tax", the tax that gives rise to a tax receivable sold pursuant to the provisions of this section.

"Service agent", a person or entity employed by or acting on behalf of a purchaser, whether or not for a fee or other compensatory arrangement, for the purpose of collecting tax receivables purchased by said purchaser from a municipality in the manner provided herein.

"Statutory notice third party", a third party entitled to receive notices with respect to an individual taxpayer receivable pursuant to section thirty-eight or section thirty-nine or any other general or special law.

"Subsequent individual taxpayer receivable", an individual taxpayer receivable arising in connection with a parcel with respect to which an individual taxpayer receivable is presently outstanding.

"Tax receivable", the right to receive payment of taxes assessed and due on real and personal property, in one or more fiscal years and sold by assignment or transfer, either individually or in bulk, by an appropriate financial official to a purchaser pursuant to the provisions of this section.

"Taxpayer", a person or entity owning property, real or personal, against whom a municipality has assessed real property taxes.

"Taxes", taxes assessed by a municipality against real and personal property under chapters fifty-nine and sixty or any other charge added to and committed as part of the tax and secured by a tax lien.

(b) The appropriate financial official of a municipality may arrange for and assign or transfer to a purchaser the municipality's right to receive payments owed by a taxpayer on tax receivables after the date upon which the amounts so owed may be paid without interest or penalty. If any taxes owed to a municipality include taxes assessed by a district located wholly or in part within the limits of such municipality, then such district may assign or transfer the right to receive payment of such taxes pursuant to this section in accordance with guidelines or regulations that the commissioner may issue. The assignment or transfer of individual taxpayer receivables by a municipality may be made either individually or in bulk. Prior to the assignment or transfer of individual taxpayer receivables, the appropriate financial official shall publish, in accordance with section 1, a list of all receivables that will be offered for assignment or transfer hereunder at least 60 days prior to the offer of such parcel for assignment or transfer and a municipality may not offer for assignment or transfer any parcel upon which a taxpayer has entered into and is in compliance with the terms of a payment agreement with the appropriate financial official. If the taxpayer fails to comply with such agreement, the appropriate financial official may assign or transfer such parcel in accordance with the provisions established hereunder. The appropriate financial official may assign or transfer any receivables either individually or in groups without regard to class, except for: (1) parcels with respect to which the taxpayer has entered into a payment agreement in accordance with the provisions of this section; (2) parcels which are part of the estate of a bankrupt; (3) parcels which the appropriate financial official has determined are or may be subject to a lien under the provisions of chapter 21E; and (4) such other categories of parcels as the commissioner may by guideline define or as the municipality, with the approval of the commissioner, may authorize by vote of its selectmen, town council, or city council and mayor. Two or more collectors, or 2 or more treasurers, may jointly assign their respective municipalities' receivables in accordance with guidelines issued by the commissioner.

(c) Tax receivables so assigned or transferred by an appropriate financial official shall be sold subject to the following conditions:

(1) The sale of tax receivables shall be by public sale to the most responsible and responsive offeror taking into consideration the following evaluation criteria: (i) the price proposed by the offeror; (ii) the offeror's qualifications and experience; (iii) the offeror's plan for communicating with the taxpayers; (iv) whether the offeror has a regular place of business in the commonwealth; (v) whether the offeror is in good standing with the department of revenue; and (vi) other criteria determined by the commissioner and the municipality. The sale shall provide for the option to purchase subsequent tax receivables subject to subsection (h) and any regulations that may be promulgated by the commissioner pursuant thereto.

(2) The sale price shall be equal to not less than (i) the amount assessed and due from the face value of the tax receivables sold hereunder and (ii) any unpaid accrued interest, statutory fees, penalties and charges owed to the municipality as of the date of sale of the tax receivables. Tax receivables may, with the approval of the town meeting, town council or city council and mayor, be sold either at a discount of not more than 50 per cent of the interest on the receivable or at a premium, under such terms as the commissioner may determine by regulations that shall be promulgated pursuant to this section. Such sale price or discounted sale price may reflect any interest accrued on any individual taxpayer receivable or related tax to the date of the sale of the right to receive payment of such tax. Any unpaid statutory fees and charges as of the date of the sale with respect to such individual taxpayer receivable or related tax shall continue to be payable to the municipality and shall be paid to it by the purchaser from the first amounts collected by the purchaser on such tax receivable unless otherwise received by such municipality.

(3) The purchaser shall pay the sale price to the appropriate financial official by certified or bank cashier's check, or by such other transfer of funds authorized by the appropriate financial official under the terms of the sale.

(4) Any amounts paid, except amounts described in paragraph two if under a discount sale, subsequent to the satisfaction of the sale price for tax receivables in respect of an individual taxpayer receivable, by or on behalf of a taxpayer, shall be the sole property of the purchaser thereof, and if received by the municipality shall be paid promptly in accordance with the terms of the sale, to such purchaser. The municipality shall agree to receive payment of such amounts owing to the purchaser as are tendered to it by or on behalf of any taxpayer and to provide such payments to the purchaser in accordance with the terms of the sale and to issue municipal lien certificates with respect to the unpaid amounts of tax receivables.

(5) Any premium payment received by a municipality shall be deposited in the General Fund of such municipality and applied in such manner and for such purposes as provided by law for amounts in the General Fund.

(6) Any amounts paid by a purchaser to a municipality, exclusive of excess amounts received as described in paragraph (5), for any tax receivables that are not current tax receivables shall be segregated on the books of such municipality to the extent any such amount is in excess of any available funds deficit and shall be appropriated by the city council or town meeting or town council, as applicable, of such municipality only for purposes for which such municipality is authorized to borrow for a period of five years or more unless otherwise approved by the commissioner.

(7) The municipality shall provide the purchaser when tax receivables are sold with the name and address of each statutory notice third party to whom notice is due with respect to any taxpayer, individual taxpayer receivable or related tax.

(8) Whenever after the sale of any tax receivable the municipality shall receive a notice from a statutory notice third party in respect of the individual taxpayer receivable or related tax, the municipality shall make available to the purchaser a copy of such notice.

(9) A purchaser owning any tax receivable shall give notice to a taxpayer and to the appropriate municipality of the name, address, telephone number and preferred method of communication with said purchaser and any service agent acting on behalf of said purchaser within 12 business days of purchasing said tax receivable. Upon written request by the taxpayer in such form as may be determined by the municipality, the municipality shall furnish a copy of such information to the taxpayer within 12 business days of receiving such request. Whenever the purchaser or the service agent of such tax receivables shall change, the new purchaser or service agent shall provide the notice required herein within 12 business days of the effective date of such change.

(10) Except as provided for in the terms of the sale in accordance with regulations promulgated

by the commissioner, no purchaser or service agent thereof may enter into an agreement with a taxpayer or with any party with interest in a parcel, that has the effect of requiring said taxpayer or interested party to pay more than said taxpayer or interested party could be required to pay to the municipality on account of the tax receivable owed to the municipality in accordance with the provisions of this chapter or chapter fifty-nine of the General Laws.

(d) The sale of tax receivables shall be without recourse to the municipality selling the same except as otherwise provided in this subsection.

(1) The agreement between a municipality and a purchaser for the sale of tax receivables may provide for the repurchase of such tax receivables that do not conform to the terms and conditions of such agreement for the amount paid by the purchaser plus actual costs incurred by the purchaser from the date of sale.

(2) The agreement between a municipality and a purchaser for the sale of tax receivables may provide for the repurchase at the election of the municipality of tax receivables inadvertently included in the sale that were excludable under the definition of the class to be assigned that was approved by the commissioner under subsection (b). Such repurchases at the option of the municipality shall take place not later than 6 months immediately following the assignment.

(3) If any individual taxpayer receivable (i) shall be abated or (ii) is less than the amount for which the tax receivable in respect thereof was purchased by the purchaser at the time of sale, then, in each case, the purchaser shall be reimbursed by the amount of such abatement or other reduction in the amount of the tax receivable. If such tax receivable was purchased for a discount as provided in paragraph (2) of subsection (c), the repurchase price or reimbursement shall be reduced by the same percentage by which the purchase price of the tax receivable was discounted. In lieu of any such repurchase or reimbursement, the municipality may provide a replacement tax receivable of the same fiscal year as the tax receivable to be replaced that, together with any cash provided by the municipality or the purchaser, shall equal such purchase price or reimbursement amount; provided, however, that a replacement tax receivable shall be of similar market value as the tax receivable that is being replaced. The replacement tax receivable shall be provided only after compliance with subsection (b).

(4) The reimbursement amount, pursuant to paragraph (3), shall include, in the case of abatement, interest accrued on such amount from the date of purchase by the purchaser to the date of repurchase or reimbursement by the municipality, calculated in accordance with the rate provided in section 69 of chapter 59.

(5) The obligation of the municipality to repurchase any tax receivable pursuant to paragraphs (1) and (2), or to reimburse the purchaser pursuant to paragraph (3), including any replacement tax receivable in lieu of such repurchase or reimbursement, shall be set forth in an agreement between the municipality and the purchaser thereof, and (i) such obligation shall not exceed 10 per cent of the aggregate purchase price received by the municipality from the purchaser, inclusive of any interest and statutory fees paid by such purchaser to the municipality; but in the case of any reimbursement pursuant to said paragraph (3), such reimbursement amount shall not be charged to such percentage limitation; and (ii) the maximum period of time during which a municipality shall remain obligated to repurchase any tax receivable shall not exceed the lesser of: (a) 3 years from the date a tax receivable was purchased from the municipality, and (b) the period ending on the date 6 months prior to the date on which the lien securing the individual tax liability would terminate pursuant to section 37.

(6) The limitations set forth in this subsection shall not apply in any case involving fraud or misrepresentation.

(e) The sale of tax receivables pursuant to this section shall not affect (i) the legal authority of the municipality with respect to any taxpayer or individual taxpayer receivable or related tax, including the granting of abatements pursuant to law, (ii) the security for the payment of the individual taxpayer receivable and any related tax, (iii) the accrual of interest or the rate thereof in respect of the delinquency of such individual taxpayer receivable and any related tax or (iv) the rights and remedies of each taxpayer in respect of such individual taxpayer receivable and any related tax. The rights and remedies of the purchaser of the right to receive payment of any individual taxpayer receivable shall be subrogated to all the rights and remedies of the municipality to receive and enforce payment of such individual taxpayer receivable and any related

tax and interest accrued and to accrue thereon, including, without limitation, the right to take tax title in its own name in the same manner that the municipality is authorized to take tax titles. The said right to take tax title shall vest in the purchaser with the same force and effect as if such tax title had vested in the municipality, including the accrual of interest at the rate provided in section sixty-two for land taken or purchased by a town and not assigned; provided, however, that:

(1) For purpose of calculating a municipality's available funds, an individual tax receivable or related tax shall be treated as paid to the extent provided in guidelines or regulations issued by the commissioner upon the sale, assignment or transfer of such in accordance with the provisions of this section; provided, however, that for the purposes of issuance of municipal lien certificates, abatement and abatement appeal rights, the rights of the municipality with regard to the individual tax receivable or related tax are preserved in full.

(2) Notwithstanding the third paragraph of section sixty-two, subsequent to a duly authorized and executed sale or auction, a treasurer shall have no authority to adjust the amount of a tax title held by a purchaser on account of erroneous municipality utility bills or interest charges.

(3) The right of a municipality established under section twenty-nine shall remain with the municipality under the terms of any sale or auction pursuant to the provisions of this section and the purchaser shall not have the benefit of the assistance to collect taxes as authorized for a municipality by section thirty-three.

(4) A purchaser shall not have the right to take immediate possession of the land and collect the rent and income from such land as otherwise permitted under section fifty-three, except as necessary to meet a requirement of subsection (b), (c) or (e), as applicable, of the definition of "Owner", or "Operator" in section two of chapter twenty-one E.

(5) For the purposes of subsection (d) of the definition of "Owner", or "Operator" in section two of chapter twenty-one E, the taking of tax title by a purchaser shall be deemed a taking pursuant to section fifty-three, and the purchaser shall be deemed a city or town; provided, however, that the foregoing shall not prohibit the purchaser from the benefits of subsection (b) or subsection (c) of such definition, as otherwise applicable, to the extent that the purchaser meets the requirements thereof.

(6) No notice shall be required to be given to any statutory notice third party from the purchaser in connection with the taking of tax title by the purchaser unless and until the purchaser or its service agent receives actual notice of such statutory notice third party.

(f) A purchaser may use a service agent to act on its behalf, whether or not for compensation. The purchaser, or its service agent, shall maintain a record of all tax receivables so serviced, which shall contain the name and address of the taxpayer and the initial amount owing pursuant to each tax receivable, the amounts paid by or on behalf of the taxpayer liable for the individual tax receivable, the amount of any abatement thereof and of any amounts permitted by law to be added thereto, and the final disposition thereof. Such records shall be open to inspection by the appropriate financial official with respect to his municipality during normal business hours. Within seven business days of receipt by a purchaser of a request by an appropriate financial official, a purchaser or any service agent acting on its behalf shall provide a municipality with any and all records relating to any and all receivables sold, assigned or transferred to a purchaser by a municipality in the form provided for in the agreement between the municipality and the purchaser; provided, however, if such request by an appropriate financial official indicates that it is made on behalf of a taxpayer, such purchaser shall furnish the requested information within three business days by means of electronic transmission and follow such transmission, where appropriate, with information in the form provided for in the agreement between the municipality and the purchaser. Whenever a purchaser or the service agent shall perform any of the services for which a fee or charge is permitted by law and by the assignment or transfer agreement between the appropriate financial official and the purchaser to be added to the amount of the individual tax liability, the amount of the tax receivable may be increased by the amount of such fee or charge. All fees charged by a purchaser shall be established pursuant to a fee schedule approved by the commissioner and a copy of such fee schedule shall be provided to the appropriate financial official who shall maintain the same in the municipal office of the appropriate financial official. A copy of such shall be furnished to the taxpayer by the appropriate financial official upon request by the taxpayer. A municipality may charge the taxpayer for the actual cost of the copy.

(g) The sale agreement between a municipality and a purchaser shall include, but shall not be limited to, the following provisions:

(1) The sale of tax receivables shall be recorded on a written instrument of transfer upon receipt of the purchase price by the appropriate financial official: (i) reciting that it is an assignment and transfer to the purchaser of the right to receive payment of the taxes identified therein pursuant to this section (ii) identifying all such individual tax liabilities associated with such sale and specifying the name, address and phone number of such purchaser, (iii) specifying the amount of the purchase price and (iv) signed and dated by the appropriate financial official.

(2) Upon receipt of the purchase price by the appropriate financial official pursuant to paragraph (3) of subsection (c), said instrument of transfer shall establish that all rights, title and interest of the municipality in an individual taxpayer receivable and the right of the municipality to receive payment of the individual taxpayer receivable, including interest accruing thereon after the date of sale to the purchaser, and any statutory fees and charges arising after said date of sale, shall thereupon be transferred and assigned to such purchaser; provided, however, that the municipality may collect amounts owing to such purchaser according to the provisions of paragraph (4) of subsection (c).

(3) Tax receivables may be assigned and transferred successively under the same terms and conditions and in the same manner as originally assigned and transferred, provided, however, that the instrument (i) shall be signed by the assignor or transferror [1] and (ii) need not recite the purchase price.

(4) Each assignor or transferror [1] shall provide the municipality with an original record of each instrument of transfer and the municipality shall maintain such instrument of transfer with its official records.

(5) All tax receivables sold in buik in a single transaction may be identified in a single instrument of transfer, and it shall not be necessary for each such tax receivable to be identified in a separate instrument of transfer; provided, however, that the instrument of transfer shall identify by name the individual taxpayers contained therein.

(6) Where an instrument of transfer has been lost or destroyed, the purchaser of said instrument may file a notarized affidavit with the appropriate financial official of the municipality from which the tax receivable was purchased attesting under the pains and penalty of perjury to the loss or destruction of said instrument. Upon presentation of the notarized affidavit, the appropriate financial official shall on payment of a fee of ten dollars issue to the holder thereof an exact duplicate of the instrument.

(7) A fee schedule of all fees to be charged by the purchaser or service agent, provided however, that no fee other than the fees established in accordance with the fee schedule approved by the commissioner shall be attributed to any taxpayer receivable or charged to any taxpayer and provided further, that all such fees shall be reasonable in relation to the actual cost of the transaction.

(h) The purchaser of an individual tax receivable on any parcel of real estate shall have the right to purchase any subsequent delinquent individual tax receivable on the same parcel in accordance with the terms of sale of the original agreement, except that there shall be no discount or premium; the price of such subsequent receivable shall be the amount assessed together with any accrued interest, charges and fees. There shall be no requirement of notice or publication with respect to the transfer of such subsequent receivables, notwithstanding the provisions of subsection (b).

(i) The amount owed by a taxpayer for an individual taxpayer receivable may be redeemed by said taxpayer upon payment to the purchaser then holding the right to receive said receivable in an amount equal to the sum of the following: (1) the amount of delinquent taxes, penalties, interest, charges and fees that stand charged against the parcel as shown on the instrument of transfer evidencing the tax receivable; and (2) interest at the rate provided by law accruing on said receivable from the date said tax receivable was purchased until the date said tax receivable is redeemed.

(j) The commissioner shall make and from time to time revise such rules, regulations and guidelines as he determines necessary and appropriate to implement the provisions of this section.

Added by St.1996, c. 375, § 1. Amended by St.2004, c. 295, §§ 1 to 5, eff. Nov. 11, 2004.

[1] So in original.

§ 3. Tax bills; notices; affidavits of sending

The collector shall forthwith, after receiving a tax list and warrant, send notice to each person as-

sessed, resident or non-resident, of the amount of his tax; if mailed, it shall be postpaid and directed to the town where the assessed person resided on January first of the year in which the tax was assessed, and, if he resides in a city, it shall, if possible, be directed to the street and number of his residence. If the tax is a tax on real estate, the collector shall send a separate bill or notice for the portion of the tax applicable to each parcel of real estate separately assessed. An omission to send a notice under this section shall not affect the validity either of a tax or of the proceedings for its collection. An affidavit of the collector or deputy collector sending a tax bill or notice as to the time of sending shall be prima facie evidence that the same was sent at such time. All tax bills or notices issued pursuant to this section shall state (a) the date as of which the tax was assessed and (b) the fiscal year to which the tax relates. The tax notice and bill shall state that all payments shall be to or to the order of the city, town or district and not to or to the order of any officer, board or commission.

The collector may send the notice required by this section to an owner who has acquired title by a deed duly recorded subsequent to January first in the year in which said tax was assessed.

Amended by St.1933, c. 254, § 50; St.1941, c. 258, § 2; St.1943, c. 37, § 2; St.1943, c. 166, § 2; St.1954, c. 444, § 2; St.1963, c. 160, § 25; St.1969, c. 849, § 70A; St.1971, c. 766, § 23; St.1989, c. 436.

Historical and Statutory Notes

St.1877, c. 235, § 1.
P.S.1882, c. 12, § 2.
St.1888, c. 390, § 2.
St.1889, c. 334, § 1.
R.L.1902, c. 13, § 3.
St.1909, c. 440, § 2.
St.1909, c. 490, pt. 2, § 3.
St.1914, c. 198, § 2.
St.1926, c. 71, § 1.
St.1926, c. 269, § 1.

§ 3A. Form of bill or notice; electronic format; notices for rates of utility fees; nonpolitical municipal informational material

(a) Each bill or notice shall be in a form approved by the commissioner and shall summarize the deadlines under section 59 of chapter 59 for applying for abatements and exemptions. Each bill or notice shall also have printed on it the last date for the assessed owner to apply for abatement and for exemptions under clauses other than those specifically listed in said section 59 of said chapter 59. Except in the case of a bill or notice for reassessed taxes under section 77 of said chapter 59, each bill shall also have printed on it the last date on which payment can be made without interest being due. If a bill or notice contains an erroneous payment or abatement application date that is later than the date established under said chapter 59, the date printed on the bill or notice shall be the deadline for payment or for applying for abatement or exemption, but if the error in the date is the wrong year, the due date shall be the day and month as printed on the bill but for the current year. The commissioner may require, with respect to a city or town, that the tax bill or notice include such information as the commissioner may determine to be necessary to notify taxpayers of changes in the assessed valuation of the property. Each bill or notice for real or personal property tax shall have printed thereon in a conspicuous place the tax rate for each class within the town, as determined by the assessors. In addition, each bill or notice for a tax upon real property shall identify each parcel separately assessed by street and number or, if no street number has been assigned, by lot number, name of property or otherwise, shall describe the land, buildings and other things erected on or affixed to the property and shall state for each such parcel the assessed full and fair cash valuation, the classification, the residential or commercial exemption, if applicable, the total taxable valuation and the tax due and payable on such property. If the assessors have granted the owner an exemption under any clause specifically listed in said section 59 of said chapter 59, the bill or notice of such owner may also show the exemption and the tax, as exempted, that is due and payable on such property.

(b) The collector may issue the bill or notice required by section 3 in electronic form, provided that the electronic bill or notice meets the standards set forth in subsection (a). An electronic bill or notice issued shall be under voluntary programs established by the collector, with the approval of the board of selectmen or mayor, as the case may be. No political subdivision shall require a taxpayer to take part in an electronic billing system or program.

(c) The collector may include in the envelope or electronic message in which a property tax bill is sent those bills or notices for rates, fees and charges assessed by the city or town for water or sewer use, solid waste disposal or collection or electric, gas or other utility services as may be authorized by ordinance or by-law; provided, how-

ever, that the bills or notices shall be separate and distinct from the property tax bills. The ordinance or by-law may authorize the collector, upon vote of any municipal water and sewer commission established by the city or town under chapter 40N or by special act, to include bills or notices for rates, fees or charges assessed by the commission for water or sewer use.

(d) The collector may, with the approval of the board of selectmen or mayor, as the case may be, include in the envelope or electronic message in which a property tax bill is sent nonpolitical municipal informational material; provided, however, that if such nonpolitical municipal informational material is mailed, it shall not be included if the material causes an increase in the postage required to mail the tax bill.

Added by St.1934, c. 136, § 1. Amended by St.1936, c. 156; St.1943, c. 166, § 3; St.1943, c. 564, § 1; St.1952, c. 578, § 2; St.1954, c. 444, § 3; St.1965, c. 615, § 3; St.1966, c. 14, § 39; St.1967, c. 757, § 6; St.1969, c. 546, § 17; St.1974, c. 341; St.1974, c. 831, § 5; St.1978, c. 580, § 39; St.1979, c. 797, § 19; St.1983, c. 72, § 6; St.1983, c. 244; St.1987, c. 758, § 6; St.1989, c. 308; St.1990, c. 280, § 2; St.1996, c. 426, § 3; St.2000, c. 159, § 117; St.2010, c. 188, § 54, eff. July 27, 2010.

§ 3B. Suspension of payment; assessments reduced by exemptions

A person entitled to exemption under clause seventeenth of section five of chapter fifty-nine in respect to any real estate upon which an assessment for a permanent public improvement, payable to a city or town and required by law to be placed on the annual tax bill, has been made, may, not later than the last day for petitioning the assessors for an abatement of the local tax under section fifty-nine of said chapter fifty-nine, apply to the assessors of such city or town for suspension of the payment of such assessment for and during such time as the annual tax on said real estate is reduced by such exemption, and the assessors may thereupon, with the approval of the commissioner, order such suspension; provided, that such assessment, with interest thereon accrued prior to such suspension and with interest thereon from the day on which such estate ceases to be exempt, unless sooner paid, shall continue to be a lien upon such real estate until the expiration of two years after the termination of the period of such suspension, or, in case the assessment has been apportioned, until two years after the last portion is payable. Such assessment shall not bear interest during the period of such suspension.

Added by St.1935, c. 322, § 2.

§ 3C. City or town scholarship fund; donation; deposits; distribution

Any city or town which accepts the provisions of this section or has previously accepted chapter one hundred and ninety-four of the acts of nineteen hundred and eighty-six is hereby authorized, subject to the approval of the commissioner, to design and designate a place on its municipal tax bills, or the motor vehicle excise tax bills, or to mail with such tax bills a separate form, whereby the taxpayers of said city or town can voluntarily check off, donate and pledge an amount not less than one dollar or such other designated amount which shall increase the amount otherwise due, and to establish a city or town scholarship fund, the purpose of which shall be to provide educational financial aid to deserving city and town residents in accordance with this section and to establish a city or town educational fund, the purpose of which shall be to provide supplemental educational funding for local educational needs or to provide funding for existing adult literacy programs.

Any amounts donated to the scholarship fund or educational fund shall be deposited into a special account in the general treasury and shall be in the custody of the treasurer. The treasurer shall invest said funds at the direction of the officer, board, commission, committee or other agency of the city or town who or which is otherwise authorized and required to invest trust funds of the city or town and subject to the same limitations applicable to trust fund investments, except as otherwise specified herein. Interest earned upon such fund shall remain therewith and shall be used for the purpose of said fund without further appropriation.

In any city or town establishing a scholarship fund, there shall be a scholarship committee and educational fund committee to consist of the superintendent of the city or town schools or designee thereof, and no fewer than four residents of the city or town appointed by the board of selectmen to a term of three years. The scholarship committee or educational fund committee shall select the recipients of and amounts of financial aid from the scholarship fund and educational fund and shall be guided by any criteria established by the scholarship committee or educational fund committee sub-

ject to any ordinance or by-law and further subject to the following criteria:

(a) The recipients of financial aid must be residents of the city or town at the time the financial aid is first awarded and have been accepted to pursue education beyond the secondary school level at an institution deemed accredited by the committee.

(b) The committee shall take into consideration each recipients financial need, character, scholastic record and involvement in community work as well as extracurricular school activities.

The scholarship committee may distribute financial aid from both interest and principal of the fund, without further appropriation. The scholarship committee shall establish a procedure for determining at least on an annual basis the amounts or percentage of the funds that shall be authorized for distribution and for notifying the investing officer or agency so that the funds may be made available in a timely manner and with a minimum of penalties.

Added by St.1987, c. 712, § 3. Amended by St.1993, c. 71, § 26; St.1994, c. 60, § 76.

§ 3D. City or town aid to elderly and disabled taxation fund; voluntary check off donations

A city or town which accepts the provisions of this section is hereby authorized, subject to the approval of the commissioner, to design and designate a place on its municipal tax bills, or the motor vehicle excise tax bills, or to mail with such tax bills a separate form, whereby the taxpayers of said city or town may voluntarily check off, donate and pledge an amount not less than $1 or such other designated amount which shall increase the amount otherwise due, and to establish a city or town aid to the elderly and disabled taxation fund for the purpose of defraying the real estate taxes of elderly and disabled persons of low income.

Any amounts donated to said fund shall be deposited into a special account in the general treasury and shall be in the custody of the treasurer. The treasurer shall invest said funds at the direction of the officer, board, commission, committee or other agency of the city or town who or which is otherwise authorized and required to invest trust funds of the city or town and subject to the same limitations applicable to trust fund investments, except as otherwise specified herein. The fund, together with the interest earned thereon shall be used for the purpose specified in this section without further appropriation.

In any city or town establishing an aid to the elderly and disabled taxation fund, there shall be a taxation aid committee to consist of the chairman of the board of assessors, the city or town treasurer and three residents of the city or town to be appointed by the mayor or board of selectmen as the case may be. Said board shall adopt rules and regulations to carry out the provisions of this section and to identify the recipients of such aid.

Added by St.1998, c. 166.

§ 3E. Application of partial payments

Partial payments of bills for taxes, excises or municipal charges and fees, including partial payments under sections 22 and 62, shall be applied first to any interest due, then to collection charges, that have been added to the bills, unless the amount of the interest and charges taken together may be waived and the collector or other officer responsible for collecting the bills determines that the partial payment should be first applied to the underlying obligation.

Added by St.2003, c. 46, § 55, eff. July 31, 2003.

§§ 4, 5. Repealed, 1963, 160, Sec. 26

§ 6. Books containing tax lists; duty to keep

The collector shall make and keep the book containing the tax list committed to him or, with the written approval of the commissioner of revenue, on a mechanically or electronically prepared record, against the name of every person assessed for a tax, entries showing the disposition thereof, whether reassessed, abated or paid, and the date of such disposition.

Amended by St.1967, c. 100; St.1975, c. 71; St.1978, c. 514, § 85; St.1989, c. 341, § 39.

Historical and Statutory Notes

St.1887, c. 110, § 2.
St.1888, c. 390, § 3.
St.1889, c. 334, § 2.
R.L.1902, c. 13, § 4.
St.1909, c. 490, pt. 2, § 4.

§ 7. Cash books

He shall also keep a cash book, in which he shall enter all sums paid to him, as received, specifying the total amount of tax, abatements allowed, all interest charged, the total amount received and the date of receipt, the date and amount of every payment and disbursement made by him, and to

whom paid, with such other matters as the town requires.

Historical and Statutory Notes

St.1887, c. 110, § 1.
St.1888, c. 390, § 4.
R.L.1902, c. 13, § 5.
St.1909, c. 490, pt. 2, § 5.
St.1918, c. 48.

§ 8. Collector's books as municipal property; open to examination

All books kept by the collector, which shall be approved as to form by the commissioner, shall be furnished by, and be the property of, the town, and shall be at all reasonable times open to examination by the auditor of such town or any other agent thereof duly authorized therefor. The collector shall, on demand by the mayor, aldermen or selectmen, exhibit to them or to any persons whom they designate, at any time during ordinary business hours, the books, accounts and vouchers relating to taxes committed to him for collection and to his receipts and payments on account of taxes; and they, or the persons designated by them, shall have full opportunity to examine said books, accounts and vouchers, and to make copies and extracts therefrom.

Historical and Statutory Notes

St.1887, c. 110, § 3.
St.1888, c. 390, § 5.
St.1897, c. 126, § 2.
R.L.1902, c. 13, § 6.
St.1909, c. 490, pt. 2, § 6.
St.1918, c. 257, § 43.
St.1919, c. 5.
St.1920, c. 2.
St.1926, c. 65, § 4.

§ 9. Repealed, 1976, 451

§§ 10, 11. Repealed, 1923, 128, Sec. 2

§ 12. Custody of books, etc.; demand

A town clerk or an assessor, having knowledge of any accounts, records or papers relating to taxes in his town which should be in his custody, shall demand them of any person having them, who shall forthwith deliver them to him.

Historical and Statutory Notes

St.1892, c. 370, § 6.
R.L.1902, c. 13, § 10.
St.1909, c. 490, pt. 2, § 10.
St.1923, c. 128, § 3.

§ 13. Necessity and duty to give bond

The collector shall, before the commitment to him of any taxes of any year, or, if he is a city or town collector under section thirty-eight A of chapter forty-one, before such commitment or the collection of any other accounts due his city or town and not included within the provisions of a bond previously given by him and still in force, give a bond or bonds for the faithful performance of his duties in all capacities in which he is acting as collector either in the collection of taxes or of such other accounts, including a bond, which shall be separate, in respect to uncollected accounts, if any, turned over to him by the assessors under section ninety-seven. Each bond given under this section shall be in a form approved by the commissioner and in such sum or sums, not less than the amount or amounts established by the commissioner, as shall be fixed by the selectmen or mayor and aldermen. A copy of each such bond shall be delivered to the commissioner. If the collector does not give bond or bonds as herein required, the selectmen or mayor and aldermen may declare the office vacant and the vacancy may be filled in the manner prescribed by section forty or sixty-one A of chapter forty-one, as the case may be.

Amended by St.1937, c. 143, § 5; St.1939, c. 44; St.1941, c. 308.

Historical and Statutory Notes

R.S.1836, c. 15, § 80.
G.S.1860, c. 18, § 72.
P.S.1882, c. 27, § 124.
St.1893, c. 423, § 18.
R.L.1902, c. 25, § 77.
St.1916, c. 131, § 1.
St.1926, c. 65, § 2.

§ 14. Special collector; bond

In towns, not cities, if, at the expiration of three years from the date of the commitment of tax lists and warrant to a collector of taxes, any taxes remain uncollected and recovery cannot be made upon the bond of the collector of the amount of such uncollected taxes, the selectmen shall appoint the collector of taxes for the current year or some other person as special collector thereof. He shall furnish a satisfactory bond for the faithful performance of his duties, in such sum as the selectmen require, in a form to be approved by the commissioner.

Historical and Statutory Notes

St.1910, c. 272, §§ 1, 2.
St.1916, c. 131, § 2.

§ 15. Fees of collector

The following interest, charges and fees, and no other, when accrued, shall severally be added to the amount of the tax and collected as a part thereof:—

1. For interest, as provided by law;

2. For each written demand provided for by law, not more than $30;

3. For preparing advertisement of sale or taking, $10 for each parcel of real estate included in the advertisement and the necessary legal fees for search of title;

4. For advertisement of sale or taking in newspaper, the cost thereof;

5. For posting notices of sale or taking, $5 for each parcel or real estate included in the notice;

6. For affidavit, $10 for each parcel of land included therein;

7. For recording affidavit, the cost thereof;

8. For preparing deed or instrument of taking, $10;

9. For the issuance and delivery of a warrant to an officer, $10;

10. For notice by mail or other means to the delinquent that warrant to collect has been issued, $12;

11. For exhibiting a warrant to collect or delivering a copy thereof to the delinquent or his representative or leaving it at his last and usual place of abode or of business, and without distraint or arrest, $17.

12. For distraining goods of the delinquent, $10 and the necessary cost thereof;

13. For the custody and safekeeping of the distrained goods of the delinquent, the cost thereof, for a period not exceeding seven days, together with the expense of parking, storage, labor and towing or teaming, and other necessary expenses;

14. For selling goods distrained, the cost thereof;

15. For arresting the body, the necessary costs of the arresting officer and the cost of the travel, at the rate of $.30 per mile, from the office of the collector to the place where the arrest is made;

16. For custody of the body arrested, if payment of the delinquent tax is not made forthwith, $10, and in addition thereto travel at the rate of $.30 per mile from the place of arrest to the jail or, if payment is made before commitment to jail, for the distance from the place where the arrest is made to the place where payment is made;

17. For service of demand and notice under section fifty-three, if served in the manner required by law for the service of subpoenas on witnesses in civil cases, the cost thereof, but not more than $40;

18. For the mailing of each written demand or notice by registered mail, the cost thereof.

19. For the recording of the instrument of taking under section 54, the cost thereof.

The collector shall account to the town treasurer for all interest, charges and fees collected by him; but the town shall reimburse or credit him for all expenses incurred by him hereunder, including all lawful charges and fees paid or credited by him for collecting taxes.

The collector may, in his discretion, waive such interest, charges and fees when the total amount thereof is $15 or less.

Amended by St.1934, c. 151, § 2; St.1935, c. 252, § 1; St.1943, c. 179; St.1952, c. 398; St.1955, c. 474, § 2; St.1958, c. 306, §§ 1, 2; St.1971, c. 273, §§ 1 to 3; St.1977, c. 525, § 1; St.1977, c. 669, § 1; St.1980, c. 64, § 1; St.1983, c. 189; St.1985, c. 365; St.1986, c. 297; St.1989, c. 729, § 2; St.1996, c. 450, § 108; St.2003, c. 46, §§ 56 to 69, eff. July 31, 2003; St.2008, c. 182, § 15, eff. July 1, 2008.

St.1785, c. 70, § 8.
R.S.1836, c. 8, § 2.
G.S.1860, c. 12, § 2.
St.1862, c. 183, § 10.
St.1878, c. 266, § 13.
St.1881, c. 138, § 2.
P.S.1882, c. 12, §§ 3, 36, 47.
St.1888, c. 390, §§ 7, 29, 41, 55.
St.1889, c. 334, § 3.
St.1890, c. 331, § 2.
St.1894, c. 537, § 5.
R.L.1902, c. 13, § 13.
St.1907, c. 427.
St.1909, c. 490, pt. 2, § 13.
St.1909, c. 512.
St.1915, c. 237, §§ 22, 26.
St.1918, c. 257, §§ 45, 58.
St.1919, c. 5.
St.1920, c. 2.
St.1931, c. 434.

§ 15A. Repealed, 1963, 160, Sec. 27

§ 16. Demand for payment of tax prior to sale of land, distraining of goods or arrest; statement of amount

The collector shall, before selling the land of a resident, or non-resident, or distraining the goods

of any person, or arresting him for his tax, serve on him a statement of the amount thereof with a demand for its payment. If two or more parcels of land are assessed in the name of a resident, or non-resident, the statement of the aggregate amount of the taxes thereon may be made in one demand. Such demand may also include taxes due on account of tangible personal property and any motor vehicle excise tax. If the heirs of a deceased person, co-partners or two or more persons are jointly assessed, service need be made on only one of them. Such demand for the tax upon land may be made upon the person occupying the same on January first of the year in which the tax is assessed. No demand need be made on a mortgagee, unless he has given notice under section thirty-eight, in which case no demand need be made on the owner or occupant. Demand shall be made by the collector by mailing the same to the last or usual place of business or abode, or to the address best known to him, and failure to receive the same shall not invalidate a tax or any proceedings for the enforcement or collection of the same.

Amended by St.1933, c. 168, § 1; St.1933, c. 254, § 51.

Historical and Statutory Notes

St.1785, c. 70, § 2.
R.S.1836, c. 8, § 3.
G.S.1860, c. 12, § 3.
P.S.1882, c. 12, § 4.
St.1888, c. 390, § 8.
St.1889, c. 334, § 4.
R.L.1902, c. 13, § 14.
St.1909, c. 440, § 2.
St.1909, c. 490, pt. 2. § 14.
St.1914, c. 198, § 2.
St.1918, c. 57.

§ 17. Unpaid taxes; collection

If any tax, betterment or special assessment remains unpaid fourteen days after demand therefor, the collector, in the case of any tax, betterment or special assessment upon real estate, within two years from April first in the calendar year in which the assessment was made, and, in case of any other tax, within three years from said April first, shall collect the tax, together with all incidental charges and fees, in the manner provided by law.

Amended by St.1969, c. 849, § 70B; St.1971, c. 766, § 23.

Historical and Statutory Notes

St.1913, c. 688, § 4.
St.1914, c. 625.
St.1923, c. 128, § 4.

§ 18. Repealed, 1932, 54, Sec. 1

§ 19. Special warrant for distress or imprisonment without demand, and for acceptance of early payments

If the assessors are of the opinion that the credit of a person taxed is doubtful or that he is about to leave the commonwealth, they may, by a special warrant, direct the collector forthwith, without demand or notice, to compel payment by distress or imprisonment, whether the tax is payable immediately or at a future day, by instalments or otherwise.

If a person desires to make an early payment or payments of taxes, prior to the commitment by the assessors of the tax list and warrant required by section fifty-three of chapter fifty-nine, the assessors may, by a special warrant, authorize the collector to accept such payment.

Amended by St.1970, c. 218, § 1.

Historical and Statutory Notes

St.1785, c. 70, § 2.
St.1815, c. 130, § 3.
R.S.1836, c. 8, § 12.
G.S.1860, c. 12, § 4.
St.1874, c. 238.
P.S.1882, c. 12, § 5.
St.1888, c. 390, § 9.
R.L.1902, c. 13, § 16.
St.1909, c. 490, pt. 2, § 16.

§ 20. Certificate of abatement

If a person claims the benefit of an abatement, he shall exhibit to the collector demanding his taxes the certificate of such abatement authorized by section seventy of chapter fifty-nine; and he shall be liable for all costs and officers' fees incurred before exhibiting such certificate; provided, however, that if it is found that no tax is due, no such costs or officers' fees shall be collected.

Amended by St.1979, c. 88.

Historical and Statutory Notes

R.S.1836, c. 8, § 4.
G.S.1860, c. 12, § 5.
P.S.1882, c. 12, § 6.
St.1888, c. 390, § 10.
R.L.1902, c. 13, § 17.
St.1909, c. 490, pt. 2, § 17.

§ 21. Error in name of person; collection from intended persons

If, in the assessors' lists or in their warrant and list committed to the collector, there is an error in the name of a person taxed, the tax assessed to him may be collected of the person intended to be

assessed, if he is taxable and can be identified by the assessors.

Historical and Statutory Notes

R.S.1836, c. 8, § 5.
G.S.1860, c. 12, § 6.
P.S.1882, c. 12, § 7.
St.1888, c. 390, § 11
R.L.1902, c. 13, § 18.
St.1909, c. 490, pt. 2, § 18.

§ 22. Partial payments

After the commitment of a tax, including assessments for betterments or other purposes, to a collector for collection, the owner of the estate or person assessed or a person in behalf of said owner or person may, if the tax is a tax upon real estate, at any time and from time to time up to the date when an advertisement is prepared for the sale or taking of the real estate for the nonpayment of such tax or up to the date when the tax is certified under section sixty-one, and if the tax is a personal property tax, at any time and from time to time up to the date when a warrant or other process is issued for the enforcement and collection thereof, tender to the collector a partial payment of the tax not less than ten per cent of the total tax but in no event less in amount than ten dollars, which shall be received, receipted for and applied toward the payment of the tax. The acceptance of any partial payment in accordance with this section shall not invalidate any demand made for a tax, prior to the acceptance of such partial payment; provided that the amount stated in the demand was the amount due at the date when the demand was made. If in any court it shall be determined that the tax is more than the amount so paid, judgment shall be entered for such excess and interest upon the amount thereof to the date of the judgment, and on the amount paid to the date of payment, with costs if otherwise recoverable. The part payment authorized by this section shall not affect a right of tender, lien or other provision of law for the recovery of the amount of such tax, or interest or costs thereon, remaining due, but if the part payment is more than the tax, as finally determined, the excess, without interest, shall be repaid to the person who paid it.

Amended by St.1933, c. 254, § 52; St.1947, c. 278; St.1963, c. 160, § 28.

Historical and Statutory Notes

St.1899, c. 394, §§ 1, 2, 4.
R.L.1902, c. 13, § 19.
St.1909, c. 490, pt. 2, § 19.
St.1913, c. 599, § 2.
St.1916, c. 20.

§ 22A. Separate tax bills or notices; partial payments on account; receipts

The collector may, and shall at the request at any time of a person owning or having an interest in a parcel of land, issue a separate tax bill or notice for the tax for any year upon any parcel of land separately assessed or separately listed on the assessors' valuation list, which bill or notice shall contain a description of said parcel or reference to the assessors' valuation list sufficient to identify such parcel. With respect to the tax for any year on any parcel of land so separately assessed or separately listed, the owner of said parcel or person assessed or a person having any interest in said parcel may at any time prior to a tax taking or a tax sale of such parcel make full payment of the tax upon such parcel or may make from time to time partial payments on account of the tax upon such parcel of not less than ten per cent of such tax, but in no event less in amount than ten dollars, and otherwise subject to the terms, conditions and provisions governing partial payments of a tax contained in section twenty-two. The collector shall give a receipt in full for any such full payment and a partial receipt for any such partial payment. Any such payment in full shall discharge the tax lien upon such parcel for the taxes of the year in which such tax was assessed, and any such partial payment shall reduce the tax lien upon such parcel for the taxes of such year to the extent of the portion of the tax upon such parcel so paid. No lien shall be deemed to exist upon any parcel of land for or because of the tax or portion of tax assessed on or with respect to any other parcel. Such information as to the assessors' valuation list as may be required for the purposes of this section shall be furnished by the assessors to the collector upon demand.

Added by St.1941, c. 573, § 1.

§ 23. Filing certificates; releasing liens, etc.

The collector of taxes for any city, or for any town having more than five thousand inhabitants, as determined by the last preceding national or state census, shall, on written application by any person, and within ten days thereafter, excluding Saturdays, Sundays and holidays, furnish to such applicant a certificate of all taxes and other assessments, including water rates and charges, and charges due to municipal lighting plants, under the provisions of sections fifty-eight B to fifty-eight F, inclusive, of chapter one hundred and sixty-four which at the time constitute liens on the parcel of

real estate specified in such application and are payable on account of such real estate. The collector of taxes for any town having five thousand inhabitants or less as determined by the last preceding national or state census shall, on written application by any person, and within twenty days thereafter, excluding Saturdays, Sundays and holidays, furnish to such applicant such a certificate. Such certificate shall be itemized and shall show the amounts then payable on account of all such taxes and assessments, rates and charges, so far as such amounts are fixed and ascertained, and if the same are not then ascertainable, it shall so be expressed in the certificate. Any town officer or board doing any act toward establishing any such tax, assessment, lien or charge upon any real estate in the town shall transmit a notice of such act to the collector of taxes. Such collector of taxes shall charge twenty-five dollars for each certificate so issued, and the money so received shall be paid into the city or town treasury. The collector of taxes for any town having fewer than five thousand inhabitants as determined by the last preceding national census may, if permitted by local by-law, keep such certificate fee for his personal services. A certificate issued on or after January first, nineteen hundred and eighty-one, under this section may be filed for record or registration, as the case may be, within one hundred and fifty days after its date, and if so filed shall operate to discharge the parcel of real estate specified from the liens for all taxes, assessments, or portions thereof, rates and charges which do not appear by said certificate to constitute liens thereon, except taxes, assessments, or portions thereof, rates and charges with respect to which there has been filed for record or registration evidence of a taking or a sale by the municipality or concerning which a statement or order creating or continuing such lien has been so filed under any provision of law, if said lien can be discharged by the recording or registration of an instrument other than a certificate under this section; but a certificate issued under this section shall not affect the obligation of any person liable for the payment of any tax, assessment, rate, or charge by reason of being the assessed owner of such parcel of real estate at the time any such lien became effective. The register of deeds as such or as assistant recorder of the land court shall receive and record or register such certificate upon the payment of a fee of $50.

No register of deeds or assistant recorder of the land court shall accept for recording or registration, as the case may be, a definitive subdivision plan unless it is accompanied by a municipal lien certificate, indicating that all taxes, assessments, and charges then assessed against the land shown on the plan have been paid in full. Failure to comply with this section shall not affect the validity of the subdivision plan, the recording of the plan, or any deed of any part or all of the land shown on the plan.

Amended by St.1932, c. 197, § 1; St.1943, c. 478, § 3; St.1952, c. 388; St.1954, c. 487, § 2A; St.1958, c. 537; St.1960, c. 421, § 1; St.1971, c. 269; St.1976, c. 163; St.1978, c. 534; St.1980, c. 412; St.1981, c. 145, § 2; St.1983, c. 332; St.1987, c. 248; St.1987, c. 250; St.1989, c. 341, § 40; St.1989, c. 437, §§ 1, 2; St.1992, c. 403, § 18; St.1993, c. 110, § 117; St.1994, c. 60, § 77; St.2003, c. 4, § 6, eff. Mar. 15, 2003.

Historical and Statutory Notes

St.1907, c. 378.
St.1908, c. 299.
St.1909, c. 490, pt. 2, § 20.

§ 23A. Certificate of liens; fee schedule; acceptance of section prior to Jan. 1, 1988

In any city or town accepting the provisions of this section, prior to January first, nineteen hundred and eighty-eight, the collector of taxes shall furnish a certificate of liens as provided in section twenty-three according to the following fee schedule: for land of less than one acre upon which there is no permanent structure a fee of ten dollars; for land upon which is situated no more than a single family residence and outbuildings a fee of ten dollars; for land upon which is situated no more than a two family residence and outbuildings a fee of fifteen dollars; for land upon which is situated no more than a three family residence with outbuildings a fee of twenty dollars; for land upon which is situated a residence for four or more families a fee of forty dollars; for land upon which is situated a commercial, industrial or public utility structure a fee of one hundred dollars; for farms, forest land and all other real property a fee of fifty dollars. In no case shall the fee exceed one half of one per cent of the assessed value of the real estate and the money so received shall be paid into the town treasury.

Added by St.1977, c. 956, § 1. Amended by St.1987, c. 306, § 1.

§ 23B. Certificate of liens; fee schedule

In any city or town accepting the provisions of this section, the collector of taxes shall furnish a certificate of liens as provided in section twenty-

three according to the following fee schedule: for land of less than one acre upon which there is no permanent structure, a fee of twenty-five dollars; for land upon which is situated no more than a single family residence and outbuildings, a fee of twenty-five dollars; for land upon which is situated no more than a two family residence and outbuildings, a fee of twenty-five dollars; for land upon which is situated no more than a three family residence with outbuildings, a fee of twenty-five dollars; for land upon which is situated a residence for four or more families, a fee of one hundred dollars; for land upon which is situated a commercial, industrial or public utility structure, a fee of one hundred and fifty dollars; for farms, forest land and all other real property, a fee of fifty dollars. In no case shall the fee exceed one half of one per cent of the assessed value of the real estate and the money so received shall be paid into the town treasury.

Added by St.1987, c. 306, § 2.

§ 24. Levy by distress or seizure and sale; exemptions

If a person refuses or neglects to pay his tax for fourteen days after demand, and after a warrant to collect and a warrant to distrain or commit is issued pursuant to section twenty-nine, the collector may without unnecessary delay levy the same by distress, or seizure and sale of his goods, except tools or implements necessary for his trade or occupation, beasts of the plough necessary for the cultivation of his improved land, military arms, uniforms and equipment, utensils for housekeeping necessary for upholding life, and bedding and apparel necessary for himself and family.

Amended by St.1980, c. 64, § 2; St.1989, c. 341, § 41.

Historical and Statutory Notes

St.1785, c. 50, § 6.
R.S. 1836, c. 8, § 7.
G.S.1860, c. 12, § 7.
P.S.1882, c. 12, § 8; c. 14, § 72.
St.1887, c. 411, § 71.
St.1888, c. 390, § 12.
St.1890, c. 425, § 8.
St.1893, c. 367, § 71.
R.L.1902, c. 13, § 20; c. 16, § 85.
St.1905, c. 465, § 90.
St.1906, c. 504, § 7.
St.1908, c. 604, § 106.
St.1909, c. 490, pt. 2, § 21.
St.1912, c. 67.
St.1917, c. 327, §§ 131, 230.

§ 25. Detention of goods distrained; notice; sale

The collector may keep the goods distrained, at the expense of the owner and, if they are not redeemed by payment by the owner or his agent of the tax due, shall within thirty days after the seizure, sell them by public auction for a payment of the tax and charges of keeping and sale, first posting notice of the sale in some public place in the town at least forty-eight hours prior thereto.

Amended by St.1977, c. 175.

Historical and Statutory Notes

St.1785, c. 50, § 6.
St.1785, c. 70, § 2.
St.1791, c. 22, § 3.
R.S.1836, c. 8, § 8.
G.S.1860, c. 12, § 8.
P.S.1882, c. 12, § 9.
St.1888, c. 390, § 13.
R.L.1902, c. 13, § 21.
St.1909, c. 490, pt. 2, § 22.

§ 26. Adjournment; notice

The collector may once adjourn such sale for not more than three days, and he shall forthwith post a notice of such adjournment at the place of sale.

Historical and Statutory Notes

R.S.1836, c. 8, § 9.
G.S.1860, c. 12, § 9.
P.S.1882, c. 12, § 10.
St.1888, c. 390, § 14.
R.L.1902, c. 13, § 22.
St.1909, c. 490, pt. 2, § 23.

§ 27. Levy of tax on land by distress of stock and produce

If a person is taxed for land in his occupation, but of which he is not the owner, the collector, or his designee, after demand for payment, the issuance of the warrant to collect, and the issuance of the warrant to distrain or commit pursuant to section twenty-nine, may levy the tax by distress by the sale of cattle, sheep, horses, swine or other stock or produce of such estate, belonging to the owner thereof, which, within nine months after such assessment has been committed to him, may be found upon the premises, in the same manner as if such stock or produce were the property of the person so taxed; provided, however, that such demand for payment need not be made if the person on whom the tax is assessed resided within the precinct of the collector at the time of the assessment, and subsequently removes therefrom and remains absent three months.

Amended by St.1980, c. 64, § 3.

Historical and Statutory Notes

St.1785, c. 70, § 14.
R.S.1836, c. 8, §§ 16, 17.
G.S.1860, c. 12, § 21.
P.S.1882, c. 12, § 13.
St.1888, c. 399, § 17.
R.L.1902, c. 13, § 24.
St.1909, c. 490, pt. 2, § 25.

§ 28. Accounting for surplus

The collector shall upon demand give a written account of every sale on distress or seizure and charges, and pay to the owner any surplus above the taxes, interest and charges of keeping and sale.

Historical and Statutory Notes

St.1785, c. 70, § 2.
R.S.1836, c. 8, § 10.
G.S.1860, c. 12, § 12.
P.S.1882, c. 12, § 13.
St.1888, c. 399, § 17.
R.L.1902, c. 13, § 25.
St.1909, c. 490, pt. 2, § 26.

§ 29. Issuance of warrant to collect; hearing; imprisonment

If a person refuses or neglects to pay his tax for fourteen days after demand, the collector shall issue a warrant to collect said tax including interest, charges and fees. A warrant issued under this section may be signed by the collector or his deputy, and a facsimile of the signature of the collector shall have the same validity as his written signature.

If a person refuses or neglects to pay his tax after the collector or his designee has notified the person by mail or other means that a warrant to collect has been issued, and the collector or his designee exhibits a copy of the said warrant to collect, or delivers a copy thereof to the taxpayer, or leaves it at his last and usual place of abode, or of business, said collector or his designee may request a hearing in the district court having jurisdiction. Upon such request for hearing, the court may issue a summons, requiring said person to appear at a time and place named therein and submit to an examination on oath relative to his property and ability to pay and as to whether the tax, interest, charges and fees are owed. Such summons may be served by an officer qualified to serve civil process, including said collector or his designee, by delivering to the debtor an attested copy thereof, or by leaving it at his last and usual place of abode, at least seven days before the return day thereof. If service is not made, the court may order further notice.

If the court finds that the debt is owed and there is sufficient property and an ability to pay, a warrant to distrain or commit and take the body of such person and commit him to jail shall issue to the collector or his designee to serve upon said person, according to law.

Amended by St.1963, c. 160, § 29; St.1980, c. 64, § 4; St.1985, c. 86.

Historical and Statutory Notes

St.1785, c. 70, § 2.
R.S.1836, c. 8, § 11.
G.S.1860, c. 12, § 13.
P.S.1882, c. 12, § 14.
St.1888, c. 390, § 18.
St.1893, c. 241.
St.1901, c. 408.
R.L.1902, c. 13, § 26.
St.1909, c. 490, pt. 2, § 27.

§ 30. Certificate of commitment

A collector who commits a person to jail pursuant to a warrant to distrain or commit shall give to the keeper thereof a certificate signed by him stating that he has committed the person for nonpayment of his tax and for want of goods and chattels whereof to make distress and setting forth the amount said person shall pay for said tax, interest, charges and fees.

Amended by St.1980, c. 64, § 5.

Historical and Statutory Notes

St.1785, c. 70, § 11.
R.S.1836, c. 8, § 13.
G.S.1860, c. 12, § 14.
P.S.1882, c. 12, § 15.
St.1888, c. 390, § 19.
St.1889, c. 334, § 5.
R.L.1902, c. 13, § 27.
St.1909, c. 490, pt. 2, § 28.

§ 31. Release of imprisoned taxpayers; proceedings

The notice required by chapter two hundred and twenty-four to be given to a creditor may be given to any one of the assessors or to the collector of the city or town where the tax was assessed, any of whom may appear at the examination and do all other things which a creditor might do upon such supplementary proceedings. If a debtor is unable to pay such tax, he may be discharged in the manner provided under such proceedings.

Amended by St.1980, c. 64, § 6.

Historical and Statutory Notes

St.1790, c. 42, §§ 1 to 4.
R.S.1836, c. 8, §§ 48, 49.
St.1857, c. 141, § 24.
G.S.1860, c. 12, § 15.
P.S.1882, c. 12, § 16.
St.1888, c. 390, § 20.

R.L.1902, c. 13, § 28.
St.1909, c. 490, pt. 2, § 29.
St.1927, c. 334, § 5.

§ 32. Liability of collector for taxes, etc., after discharge

The collector shall be liable for the tax and the charges of imprisonment of a person discharged, unless he arrested and committed such person within two years after the tax was committed to him for collection, or unless he shall be exonerated therefrom by the town to which the tax is due.

Historical and Statutory Notes

St.1790, c. 42, § 6.
R.S.1836, c. 8, § 50.
G.S.1860, c. 12, § 16.
P.S.1882, c. 12, § 17.
St.1888, c. 390, § 21.
R.L.1902, c. 13, § 29.
St.1909, c. 490, pt. 2, § 30.
St.1928, c. 12.

§ 33. Aiding collector

A collector who is resisted or impeded in the exercise of the duties of his office may require any suitable person to aid him.

Historical and Statutory Notes

St.1782, c. 61, § 1.
St.1785, c. 70, § 9.
R.S.1836, c. 8, § 6.
G.S.1860, c. 12, § 17.
P.S.1882, c. 12, § 18.
St.1888, c. 390, § 22.
R.L.1902, c. 13, § 30.
St.1909, c. 490, pt. 2, § 31.

§ 34. Warrants; release after service; rearrest

If a tax assessed upon a person remains unpaid for fourteen days after demand therefor, a warrant to collect shall issue, and, thereafter, a warrant to distrain or commit may issue pursuant to section twenty-nine; but a collector or his designee to whom the court issues the warrant to distrain or commit may request that the court suspend the commitment of the taxpayer for a period of time not exceeding fourteen days and after such time if that person has not paid his tax, with all fees and charges due thereon, including the fee for service of said warrant and travel as provided by section fifteen, said officer shall then arrest said person on the aforesaid warrant, and commit him to the jail of the county where he makes the arrest or of the county wherein the city or town in which the tax is payable lies. The warrant shall run throughout the commonwealth, and any officer to whom it is directed as aforesaid may serve it and apprehend the person in any county.

Amended by St.1947, c. 313; St.1980, c. 64, § 7.

Historical and Statutory Notes

St.1785, c. 70, § 5.
R.S.1836, c. 8, § 14.
St.1842, c. 34.
G.S.1860, c. 12, § 18.
P.S.1882, c. 12, § 19.
St.1888, c. 390, § 23.
St.1889, c. 334, § 6.
R.L.1902, c. 13, § 31.
St.1908, c. 99, § 1.
St.1909, c. 490, pt. 2, § 32.
St.1913, c. 237.
St.1919, c. 12.
St.1931, c. 409, § 1.

§ 34A. Bond; release of delinquent taxpayer from custody

A person shall not be committed to jail for the non-payment of a tax, nor shall a person so committed be further detained therein, if he gives to the collector or to the officer charged with the service of the collector's warrant a bond running to the collector sufficient in amount to cover the amount of the tax and all interest and other charges and fees which are or may become due thereon, conditioned to pay the same to the collector or officer within thirty days thereafter or within such further time as the collector or officer may fix, and with such surety or sureties as the collector or officer or a master in chancery may approve. A person shall not be committed for such non-payment until he has been given a reasonable time to procure such a bond.

Historical and Statutory Notes

St.1931, c. 409, § 2.

§ 35. Actions against delinquent taxpayers

If a tax which has been committed to a collector remains unpaid after it has become due and payable, it may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the collector either in his own name or in the name of the town against the person assessed for such tax.

Amended by St.1938, c. 150, § 2; St.1946, c. 251, § 1.

Historical and Statutory Notes

St.1789, c. 4.
R.S.1836, c. 8, § 15.
St.1859, c. 171.
G.S.1860, c. 12, § 19.
P.S.1882, c. 12, § 20.
St.1888, c. 390, § 24.
St.1889, c. 334, § 7.

R.L.1902, c. 13, § 32.
St.1909, c. 490, pt. 2, § 33.

§ 36. Collection from decedents' estates

If a person assessed for a tax dies or becomes insolvent before the payment thereof, or if a tax is assessed upon the estate of a deceased person, the executor, administrator or assignee shall, if a demand has been made on him therefor, forthwith on receipt of any money applicable to the payment of the tax, pay the same, and in default shall be personally liable therefor as for his own tax.

Historical and Statutory Notes

St.1848, c. 235.
St.1852, c. 234.
G.S.1860, c. 12, § 20.
P.S.1882, c. 12, § 21.
St.1888, c. 390, § 25.
R.L.1902, c. 13, § 33.
St.1909, c. 490, pt. 2, § 34.

§ 37. Lien of taxes on land; duration; sale; title

Taxes assessed upon land, including those assessed under sections twelve, thirteen and fourteen of chapter fifty-nine, shall with all incidental charges and fees be a lien thereon from January first in the year of assessment. Except as provided in section sixty-one, such lien shall terminate at the expiration of three years and six months from the end of the fiscal year for which such taxes were assessed, if in the meantime the estate has been alienated and the instrument alienating the same has been recorded, otherwise it shall continue until a recorded alienation thereof, but if while such lien is in force a tax sale or taking is made, and the deed or instrument of taking has been duly recorded within sixty days, but the sale or taking is invalid by reason of any error or irregularity in the proceedings subsequent to the assessment, the lien and also the lien or liens for any subsequent taxes or charges which have been added to the tax title account under authority of section sixty-one shall continue for ninety days after a surrender and discharge under section forty-six or a release, notice or disclaimer under sections eighty-two to eighty-four, inclusive, has been duly recorded, or for ninety days after the sale or taking has been finally adjudged invalid by a court of competent jurisdiction. If at any time while a lien established by this section is in force, a sale or taking cannot in the opinion of the collector be legally made because of any federal or state law or because of any injunction or other action of, or proceeding in, any federal or state court or because of the action of any administrative body, the lien, if the statement provided for in section thirty-seven A is filed, shall continue as provided in said section thirty-seven A, subject, however, to any lawful action under any paramount authority conferred by the constitution or laws of the United States or the constitution of the commonwealth. Said taxes, if unpaid for fourteen days after demand therefor, may, with said charges and fees, be levied by sale or taking of the real estate, if the lien or liens thereon have not terminated. No tax title and no item included in a tax title account shall be held to be invalid by reason of any error or irregularity which is neither substantial nor misleading, whether such error or irregularity occurs in the proceedings of the collector or the assessors or in the proceedings of any other official or officials charged with duties in connection with the establishment of such tax title or the inclusion of such item in the tax title account.

Amended by St.1933, c. 254, § 53; St.1933, c. 325, § 1; St.1934, c. 131, § 2; St.1934, c. 169; St.1935, c. 269; St.1936, c. 146; St.1941, c. 84, § 1; St. 1943, c. 478, § 1; St.1976, c. 322; St.1996, c. 375, § 2.

Historical and Statutory Notes

St.1830, c. 151, § 9.
R.S.1836, c. 8, § 18.
St.1856, c. 239, § 1.
St.1859, c. 118, §§ 1, 2.
G.S.1860, c. 12, §§ 22, 23.
St.1878, c. 266, § 14.
St.1881, c. 304, § 4.
P.S.1882, c. 12, §§ 24, 25.
St.1888, c. 390, §§ 30, 31.
St.1889, c. 334, § 9.
R.L.1902, c. 13, § 35.
St.1909, c. 440, § 2.
St.1909, c. 490, pt. 2, § 36.
St.1914, c. 198, § 2.
St.1918, c. 257, § 46.
St.1919, c. 5.
St.1920, c. 2.

§ 37A. Sales, etc., that cannot be legally made; statements by collectors

If at any time while a lien established by section thirty-seven of this chapter or under chapter eighty or chapter eighty-three is in force, a sale or taking cannot in the opinion of the collector be legally made because of any federal or state law or because of any injunction or other action of, or proceeding in, any federal or state court or because of the action of any administrative body, the collector may file with the register of deeds for record or registration, as the case may be, a statement reciting that the statement is filed pursuant to this section to continue, until abatement or payment, the lien for a tax or assessment in an amount

stated, which need not include accrued interest and costs, assessed for a year or on a date specified to a person or persons named upon an estate described. The statement shall also recite the reason why, in the opinion of the collector, a sale or taking cannot then be legally made; but any error or omission in the recitation of such reason shall not affect the validity of such statement. The filing of such statement for record or registration shall operate to extend the time within which a sale or taking may lawfully be made by continuing until payment or abatement of the lien for such tax or assessment and all assessments or portions thereof, rates and charges of every nature which have been added to or become a part thereof; but the filing of such statement shall not discharge the collector from liability upon his bond for failure to collect such tax, assessment or portion thereof, rate or charge, and the collector shall proceed to sell or take the land within six months after he first gets notice that the disability has been removed. The collector at any time may, and upon the payment or abatement of the tax to which such statement relates shall, file a renunciation of all rights under such statement; and the provisions relative to the recordation of such statement shall apply to the recordation of such renunciation.

Added by St.1943, c. 478, § 2. Amended by St.1960, c. 421, § 2; St.1981, c. 303.

§ 37B. Certification of amounts necessary for taking land under Sec. 37

The collector of taxes shall certify in writing to the board of assessors the amounts necessary for the taking of land under the provisions of section thirty-seven. The board of assessors shall include the amounts so certified in computing the amount to be raised under the provisions of section twenty-three of chapter fifty-nine.

Added by St.1977, c. 176, § 1.

§ 38. Mortgagees; notice requiring demand for payment

If a mortgagee of land situated in the place of his residence, before July first of the year in which the tax is assessed, gives written notice to the collector that he holds a mortgage on land, with a description of the land, the demand for payment shall be made on the mortgagee instead of the mortgagor.

Amended by St.1933, c. 254, § 54; St.1933, c. 325, § 2.

Historical and Statutory Notes

St.1848, c. 166, § 1.
G.S.1860, c. 12, § 24.
P.S.1882, c. 12, § 26.
St.1888, c. 390, § 32.
St.1889, c. 334, § 10.
R.L.1902, c. 13, § 36.
St.1909, c. 490, pt. 2, § 37.

§ 39. Service of tax notice; designating place

If a mortgagee or an owner of land causes a notice, designating a place in the town where such land lies at which all papers relative to taxes on such land which are to be served on him may be left, to be recorded in January of any year in the office of the clerk of such town and, during said month, to be delivered to the collector thereof, the collector shall serve at such place any notice, demand for payment or other paper relating to the taxes on such land which is to be served by him. The collector shall not advertise the sale of such land for two months after the time of a demand so made.

Amended by St.1933, c. 325, § 3.

Historical and Statutory Notes

St.1794, c. 68, § 1.
R.S.1836, c. 8, §§ 20, 21.
St.1848, c. 166, § 2.
G.S.1860, c. 12, §§ 25, 26.
P.S.1882, c. 12, §§ 27, 28.
St.1888, c. 390, §§ 33, 34.
St.1889, c. 334, § 11.
St.1899, c. 425, § 1.
R.L.1902, c. 13, § 37.
St.1909, c. 490, pt. 2, § 38.

§ 40. Notice of sale; contents

The collector shall give notice by publication of the time and place of sale of land for nonpayment of taxes. Such notice shall contain a substantially accurate description of the several rights, lots or divisions of the land to be sold, which shall be furnished to the collector by the assessors upon demand of the collector, the amount of the tax assessed on each, and the names of all owners known to the collector. Such notice of the sale of the undivided real estate of a deceased person assessed to his heirs or devisees or assessed in general terms to his estate shall contain the names of all the heirs or devisees interested in such real estate, if the probate records of the county where the land lies disclose their identity.

Historical and Statutory Notes

St.1785, c. 70, § 7.
R.S.1836, c. 8, §§ 24, 25.
St.1848, c. 166, § 3.
G.S.1860, c. 12, §§ 28, 29.
P.S.1882, c. 12, §§ 30, 31.
St.1888, c. 390, §§ 35, 36.
R.L.1902, c. 13, § 38.
St.1909, c. 490, pt. 2, § 39.

St.1913, c. 255.
St.1920, c. 270.

§ 41. Description in case of change of local name

If land to be sold is situated in a town the name of which has been changed by law within three years preceding the sale, the collector shall designate such town in his notices of the sale by both its former and existing name.

Historical and Statutory Notes

St.1785, c. 70, § 7.
R.S.1836, c. 8, § 26.
G.S.1860, c. 12, § 31.
P.S.1882, c. 12, § 33.
St.1888, c. 390, § 38.
R.L.1902, c. 13, § 39.
St.1909, c. 490, pt. 2, § 40.

§ 42. Notice of sale; posting

The collector shall, fourteen days before the sale, post a notice similar to that required by section forty in two or more convenient and public places.
Amended by St.1933, c. 164, § 2.

Historical and Statutory Notes

St.1785, c. 70, § 7.
R.S.1836, c. 8, § 27.
St.1848, c. 166, § 4.
G.S.1860, c. 12, § 30.
P.S.1882, c. 12, § 32.
St.1888, c. 390, § 37.
St.1889, c. 334, § 12.
St.1901, c. 108.
R.L.1902, c. 13, § 40.
St.1909, c. 490, pt. 2, § 41.

§ 43. Conduct of sale, etc.

If the taxes are not paid, the collector shall, at the time and place appointed for the sale, sell by public auction, for the amount of the taxes and interest, if any, and necessary intervening charges, the smallest undivided part of the land which will bring said amount, or the whole for said amount, if no person offers to take an undivided part; and shall at such sale require of the purchaser an immediate deposit of such sum as he considers necessary to insure good faith in payment of the purchase money, and, on failure of the purchaser to make such deposit forthwith, the sale shall be void and another sale may be made as provided in this chapter. The word "taxes", as used in the provisions of this and the following sections of this chapter relating to collection by sale or taking of any parcel of land shall, so far as pertinent, include all taxes, assessments or portions thereof, rates and charges of every nature which constitute a lien upon such parcel and which have lawfully been placed upon the annual tax bill of a municipality or of a district wholly or partly located within its limits. The collector, on behalf of such municipality and district or either of them, shall make a single sale or taking of any parcel of land for all unpaid taxes as so defined. If the municipality purchases or takes the land in such case, the proceeds received upon redemption of the tax title or upon a sale following foreclosure of the right of redemption shall be applied first to taxes assessed on account of the municipality under chapter fifty-nine, including interest thereon, and all costs, charges and terms of redemption in any way resulting from such sale or taking, second to any district taxes, including interest thereon, in the order in which they were committed to the collector, and the balance to other assessments or portions thereof, rates and charges, including interest thereon, in the order in which they were committed to the collector.
Amended by St.1932, c. 54, § 2; St.1935, c. 183; St.1935, c. 236.

Historical and Statutory Notes

St.1785, c. 70, § 7.
R.S.1836, c. 8, §§ 28, 29.
G.S.1860, c. 12, § 33.
P.S.1882, c. 12, § 35.
St.1888, c. 390, § 40.
St.1900, c. 376.
R.L.1902, c. 13, § 41.
St.1909, c. 490, pt. 2, § 42.
St.1918, c. 257, § 48.
St.1919, c. 5.
St.1920, c. 2.
St.1923, c. 377, § 7.

§ 44. Adjournment

The collector may adjourn the sale from time to time not exceeding seven days in all, and shall give notice of every adjournment by a public declaration thereof at the time and place appointed for the sale.

Historical and Statutory Notes

R.S.1836, c. 8, § 30.
G.S.1860, c. 12, § 34.
P.S.1882, c. 12, § 37.
St.1888, c. 390, § 42.
R.L.1902, c. 13, § 42.
St.1909, c. 490, pt. 2, § 43.

§ 45. Collector's deed; contents; effect

The collector shall execute and deliver to the purchaser a deed of the land, stating the cause of sale, the price for which the land was sold, the name of the person on whom the demand for the tax was made, the places where the notices were posted, the name of the newspaper in which the

advertisement of the sale was published, and the residence of the grantee, and shall contain a warranty that the sale has in all particulars been conducted according to law. The deed shall convey the land to the purchaser, subject to the right of redemption. The title thus conveyed shall, until redemption or until the right of redemption is foreclosed as hereinafter provided, be held as security for the repayment of the purchase price, with all intervening costs, terms imposed for redemption and charges, with interest thereon, and the premises conveyed, both before and after either redemption or foreclosure, shall also be subject to and have the benefit of all easements and restrictions lawfully existing in, upon or over said land or appurtenant thereto, and, except as provided in section seventy-seven, all covenants and agreements running with said premises either at law or in equity, when so conveyed. Such deed shall not be valid unless recorded within sixty days after the sale. If so recorded it shall be prima facie evidence of all facts essential to the validity of the title thereby conveyed, whether the deed was executed on or before as well as since July first, nineteen hundred and fifteen. No sale hereafter made shall give to the purchaser any right to possession of the land until the right of redemption is foreclosed, as hereinafter provided.

Amended by St.1933, c. 325, § 4; St.1937, c. 209; St.1938, c. 339, § 1; St.1971, c. 716, § 2; St.1973, c. 1215, § 4.

Historical and Statutory Notes

St.1785, c. 70, § 7.
R.S.1836, c. 8, § 31.
St.1848, c. 166, § 5.
G.S.1860, c. 12, § 35.
P.S.1882, c. 12, § 38.
St.1888, c. 390, § 43.
St.1901, c. 197, 519.
R.L.1902, c. 13, § 43.
St.1902, c. 423.
St.1905, c. 193.
St.1909, c. 490, pt. 2, § 44.
St.1911, c. 370.
St.1915, c. 237, § 1.
St.1918, c. 257, § 49.
St.1919, c. 5.
St.1920, c. 2.
St.1931, c. 356, § 1.

§ 46. Defective titles; reimbursement of purchasers; reassessment

If it subsequently appears that, by reason of an error, omission or informality in the assessment or the sale, the purchaser has no claim upon the property sold, he may within six months after the date of the deed, offer by writing given to the collector to surrender and discharge his deed or to assign and transfer to the town all his right, title and interest in the premises, as the collector shall elect. Such offer shall contain a specific statement of the reason why the holder has no claim on the land sold, with the evidence on which he relies, and if such evidence consists of any public record or of facts shown therein, such offer shall contain a specific reference thereto. Upon such surrender and discharge or assignment and transfer, the town shall pay to the purchaser the amount which he paid, with interest at the rate of eight per cent per annum, which payment shall be in full for all damages for any defects in the proceedings or under the warranty in such deed. No town and no treasurer or collector thereof shall pay or be liable for any amount due under this section unless such statement is filed.

Upon such payment except in case an assignment and transfer is given to the town, the collector shall cause a surrender and discharge of the tax title deed to be recorded in the proper registry of deeds; and thereupon, if the error, omission or informality by reason of which it appears that the purchaser has no claim upon the property sold occurred in the assessment of the tax or assessment, the collector shall notify the board by which the tax or assessment was laid, which shall forthwith reassess it as provided in section seventy-seven of chapter fifty-nine, and if it occurred in the proceedings of the collector, he shall forthwith proceed to collect the unpaid tax or assessment in conformity to law.

Amended by St.1934, c. 131, § 1.

Historical and Statutory Notes

St.1862, c. 183, § 6.
St.1878, c. 266, § 1.
P.S.1882, c. 12, § 39.
St.1882, c. 243, § 3.
St.1888, c. 390, §§ 44, 47.
R.L.1902, c. 13, § 44.
St.1909, c. 259.
St.1909, c. 490, pt. 2, § 45.
St.1912, c. 390.

§ 47. Tax title owners; filing required statements

Whoever has a title to land under a sale for nonpayment of taxes or other assessment and is a resident of the town where such land lies shall file with the treasurer thereof and in the registry of deeds a statement of his residence and place of business, with the street and number, if any. Such person, who is not a resident of such town or who removes therefrom, shall appoint an agent residing therein, or in the town where the tax deed is

recorded, authorized to release such land. He shall also file the statement above required in which he shall also state the name of such agent and his residence and place of business, with the street and number, if any. Whenever a person holding a tax title changes his residence or place of business or agent, he shall file a new certificate. Tender of payment to, and service of process upon, such agent shall be a sufficient tender to, or service upon, the holder of such tax title.

Historical and Statutory Notes

St.1882, c. 243, §§ 1, 2.
St.1888, c. 390, §§ 45, 46.
R.L.1902, c. 13, § 45.
St.1909, c. 490, pt. 2, § 46.

§ 48. Insufficient bids; municipality as purchaser; collector's duties

If at the time and place of sale no person bids for the land offered for sale an amount equal to the tax and charges, and if the sale has been adjourned one or more times, the collector shall then and there make public declaration of the fact; and, if no bid equal to the tax and charges is then made, he shall give public notice that he purchases for the town by which the tax is assessed said land as offered for sale at the amount of the tax and the charges and expenses of the levy and sale. Said amount, together with the cost of recording the deed of purchase, shall be allowed him in his settlement with such town, provided he has caused the deed to be duly recorded within sixty days after the purchase and to be delivered to the town treasurer.

Amended by St.1933, c. 325, § 5.

Historical and Statutory Notes

St.1862, c. 183, §§ 1, 5.
P.S.1882, c. 12, § 40.
St.1888, c. 390, § 48.
R.L.1902, c. 13, § 46.
St.1909, c. 490, pt. 2, § 47.
St.1918, c. 257, § 50.
St.1919, c. 5.
St.1920, c. 2.
St.1927, c. 126, § 1.

§ 49. Purchase price unpaid; validity of sale

If the purchaser fails to pay the collector within twenty days after the sale the amount bid by him, the sale shall be void, and the town shall be deemed to be the purchaser of the land, under the preceding section.

Historical and Statutory Notes

St.1862, c. 183, § 3.
P.S.1882, c. 12, § 41.
St.1888, c. 390, § 49.
St.1889, c. 334, § 13.
R.L.1902, c. 13, § 47.
St.1909, c. 490, pt. 2, § 48.

§ 50. Municipalities as purchasers; deeds; tax title accounts; foreclosures

If the town becomes the purchaser, the deed to it, in addition to the statements required by section forty-five, shall set forth the fact that no sufficient bid was made at the sale or that the purchaser failed to pay the amount bid, as the case may be, and shall confer upon such town the rights and duties of an individual purchaser. Every such deed and every instrument of taking described in section fifty-four shall be in the custody of the town treasurer, and there shall be set up on the books of the town, whether kept by the treasurer or otherwise, a separate account of each parcel of land covered by any such deed or instrument, to which shall be charged the amount stated in the deed or instrument, the cost of recording the same, and, upon certification in accordance with section sixty-one, all uncollected taxes assessed to such parcel for any year subsequent to that for the taxes for which such parcel was purchased or taken, with all legal costs and charges thereon, including interest accrued up to the date of such certification, until redemption, foreclosure or assignment. The tax title account hereby required to be kept, or a duly authenticated copy thereof, shall be prima facie evidence of all facts essential to the determination of the amount necessary for redemption. The town treasurer shall institute proceedings for foreclosure as soon as such proceedings are authorized by sections sixty-two and sixty-five. The commissioner may at his discretion institute proceedings in the name of the treasurer in the event that such proceedings are not instituted by the treasurer. Any expense incurred by the commissioner hereunder shall be assessed against the city or town and collected in the same manner as expenses for auditing municipal accounts under the provisions of section forty-one of chapter forty-four.

Amended by St.1933, c. 325, § 6; St.1935, c. 414, § 1; St.1936, c. 93, § 2; St.1941, c. 319, § 1.

Historical and Statutory Notes

St.1862, c. 183, §§ 2, 4.
P.S.1882, c. 12, §§ 42, 43.
St.1888, c. 390, §§ 50, 51.
St.1889, c. 334, § 14.
R.L.1902, c. 13, §§ 48, 52.
St.1909, c. 490, pt. 2, §§ 49, 53.
St.1918, c. 257, § 51.
St.1919, c. 5.
St.1920, c. 2.
St.1927, c. 126, § 2.

§ 50A. Municipalities; land held under tax sales; protecting interests

In the event of the filing of a certificate under clause (38) of section five of chapter forty in respect to any particular real estate held by a town under a purchase or taking for non-payment of taxes, the collector shall make a written demand upon the owner of record thereof requiring that he take certain specified action to preserve, care for or maintain the same or protect by insurance or otherwise the town's interest therein, within a period fixed in the demand the expiration of which, except in case of emergency, shall be not earlier than seventy-two hours after the date on which the service of said demand is completed. Said demand shall be served upon such owner of record by mailing the same to him at his last known residence or place of business, postage prepaid, and by posting a copy thereof upon such real estate. In default of action in compliance with such demand, the town may proceed to take the specified action and the expenses incurred on account thereof shall be included in the tax title account for such real estate and be treated in all respects as part of the legal costs and charges of collection.

Added by St.1934, c. 154, § 2.

§ 50B. Municipalities; foreclosure proceedings; appropriations

Every city or town shall include in its annual budget the amount estimated by its treasurer as the amount necessary for land court proceedings for tax title foreclosure; provided, that the amount so included shall be not less than eighty dollars for each tax title ripe for foreclosure held by said city or town as security for the payment of taxes involving property having a current assessed valuation in excess of one thousand dollars.

If in any year the amount so estimated is not included in the budget as finally passed the treasurer shall certify in writing to the assessors such portion of the amount estimated in accordance with the preceding paragraph as has not been provided and the assessors shall raise in the assessment for such year the amount certified to them by the treasurer and thereupon said amount shall be added to the treasurer's appropriation and may be expended by said treasurer for necessary land court proceedings for tax title foreclosure.

Added by St.1946, c. 185. Amended by St.1977, c. 66.

§ 51. Several parcels of small value; sale together

If unimproved and unoccupied land does not exceed four thousand square feet in area, or is laid out in lots or parcels no one of which exceeds such area, and the taxes unpaid for any one year do not exceed fifty cents on such land, or on any such lot or parcel thereof, the collector may give notice of the sale by publication of an advertisement stating the name of the owner of record of each lot on January first of the year of assessment, the tax due thereon and the number of such lot on a street, way or plan, without further description thereof. The collector may convey in one deed to the same purchaser or convey to the town any number of the lots so advertised and sold, and said deed shall state the name of said owner of record of each lot conveyed therein, on January first of said year, the amount of the taxes and costs due for each lot, and the number on the street, way or plan of each lot respectively, and need contain no further description of the lot, owner or amount due. The cost of the sale shall be apportioned equally among all the lots sold, and the cost of the deed shall be apportioned equally among all the lots conveyed thereby.
Amended by St.1933, c. 254, § 55.

Historical and Statutory Notes

St.1894, c. 537, §§ 1 to 4.
R.L.1902, c. 13, §§ 49 to 51.
St.1909, c. 440, § 2.
St.1909, c. 490, pt. 2, §§ 50 to 52.
St.1914, c. 198, § 2.
St.1915, c. 237, § 24.

§ 52. Management and sale of land acquired for taxes

Cities and towns may make regulations for the possession, management and sale of land purchased or taken for taxes, not inconsistent with law, regulations promulgated by the department of revenue or the right of redemption. The treasurer of any city or town holding 1 or more tax titles may assign and transfer such tax title or titles, individually or bundled, to the highest bidder after a public auction, after having given 14 days' notice of the time and place of such public auction by publication, which shall conform to the requirements of section 40, and having posted such notice in 2 or more convenient and public places in said city or town, provided that the sum so paid for such assignment is not less than the amount necessary for redemption, and may execute and deliver on behalf of the city or town any instrument necessary therefor. The treasurer shall send notice of the

intended assignment to the owner of record of each parcel at his last known address not less than 10 days prior to the assignment, but failure to receive such notice shall not affect the validity of the assignment. The instrument of assignment shall be in a form approved by the commissioner and shall be recorded within 60 days from its date and if so recorded shall be prima facie evidence of all facts essential to its validity. The instrument of assignment shall, for each parcel assigned thereunder, state the amount for which the tax title on the parcel could have been redeemed on the date of the assignment, separately stating for each parcel the principal amount and the total interest accrued until the date of assignment. The principal amount shall be the sum of the amounts for which the parcel was taken and amounts subsequently certified under section 61. Except as hereinafter otherwise provided, all provisions of law applicable in cases where the original purchaser at a tax sale is another than the city or town shall thereafter apply in the case of such an assignment, as if the assignee had been a purchaser for the original sum at the original sale or at a sale made at the time of the taking and had paid to the city or town the subsequent taxes and charges included in the sum paid for the assignment. Any extension of the time within which foreclosure proceedings may not be instituted granted by a city or town treasurer prior to assignment shall be binding upon the assignee.

Amended by St.1936, c. 392, § 1; St.1973, c. 249; St.2004, c. 295, § 6, eff. Nov. 11, 2004.

Historical and Statutory Notes

St.1862, c. 183, §§ 2, 4.
P.S.1882, c. 12, § 43.
St.1888, c. 390, § 51.
St.1889, c. 334, § 14.
R.L.1902, c. 13, § 52.
St.1909, c. 490, pt. 2, § 53.
St.1918, c. 257, § 51.
St.1919, c. 5.
St.1920, c. 2.
St.1927, c. 126, § 3.

§ 53. Taking for taxes; notice

If a tax on land is not paid within fourteen days after demand therefor and remains unpaid at the date of taking, the collector may take such land for the town, first giving fourteen days' notice of his intention to exercise such power of taking, which notice may be served in the manner required by law for the service of subpoenas on witnesses in civil cases or may be published, and shall conform to the requirements of section forty. He shall also, fourteen days before the taking, post a notice so conforming in two or more convenient and public places.

Whenever the collector of taxes of a city or town shall have taken land therein he may, in the name and on behalf of said city or town, take immediate possession of such land and, until the tax title so acquired is redeemed, collect the rent and other income from such land, which rent and income, after the payment therefrom of all necessary expenses in the care, repair and management of such land, shall be applied on account of the taxes, assessments, rates, charges, interest and costs due said city or town on said land, with any balance remaining being paid to the person otherwise entitled thereto. Upon petition of any person having a right to redeem such tax title, the superior court for the county within which the land lies, if it adjudges justice and the circumstances so warrant, may, upon such terms as it shall deem equitable, enjoin a taking of possession under this section or command the surrender of a possession taken.

Neither said city or town nor any of its officers, agents or employees shall be liable or accountable to the owner or to any other person having an interest in such land for failure to collect rent or other income therefrom; and neither said city or town nor any of its officers, agents or employees shall be liable for injury or damage caused by the possession of land under the section to such land or to the person or property of any person.

Amended by St.1933, c. 164, § 3; St.1970. c. 85.

Historical and Statutory Notes

St.1878, c. 266, § 5.
St.1881, c. 304, § 4.
P.S.1882, c. 12, § 44.
St.1888, c. 390, § 52.
R.L.1902, c. 13, § 53.
St.1909, c. 490, pt. 2, § 54.

§ 54. Instrument of taking; form; contents; effect

The instrument of taking shall be under the hand and seal of the collector and shall contain a statement of the cause of taking, a substantially accurate description of each parcel of land taken, the name of the person to whom the same was assessed, the amount of the tax thereon, and the incidental expenses and costs to the date of taking. Such an instrument of taking shall not be valid unless recorded within sixty days of the date of taking. If so recorded it shall be prima facie evidence of all facts essential to the validity of the title so taken, whether the taking was made on or before as well as since July first, nineteen hundred

and fifteen. Title to the land so taken shall thereupon vest in the town, subject to the right of redemption. Such title shall, until redemption or until the right of redemption is foreclosed as hereinafter provided, be held as security for the repayment of said taxes with all intervening costs, terms imposed for redemption and charges, with interest thereon, and the premises so taken, both before and after either redemption or foreclosure, shall also be subject to and have the benefit of all easements and restrictions lawfully existing in, upon or over said land or appurtenant thereto, and, except as provided in section seventy-seven, all covenants and agreements running with said premises either at law or in equity, when so taken.

Amended by St.1933, c. 325, § 7; St.1938, c. 339, § 2.

Historical and Statutory Notes

St.1878, c. 266, § 5.
P.S.1882, c. 12, § 46.
St.1888, c. 390, § 54.
St.1892, c. 109, § 2.
R.L.1902, c. 13, § 54.
St.1909, c. 490, pt. 2, § 55.
St.1915, c. 237, § 2.
St.1925, c. 241, § 4.
St.1931, c. 356, § 2.

§ 55. Fees for taking

If land has been so taken there shall be allowed to the collector and added to the tax the charges and fees fixed by section fifteen, and also the cost of recording the instrument of taking, provided he has caused such instrument to be duly recorded within sixty days after the taking and to be delivered to the town treasurer.

Amended by St.1933, c. 325, § 8.

Historical and Statutory Notes

St.1878, c. 266, § 13.
P.S.1882, c. 12, § 47.
St.1888, c. 390, § 55.
R.L.1902, c. 13, § 55.
St.1909, c. 490, pt. 2, § 56.
St.1927, c. 126, § 4.

§ 56. Taking in name of one of several owners; extent of taking

The assessment, sale or taking may be made in the name of one or more of the record owners at the date of assessment, and if so made, shall, subject to section forty-three, be deemed to be in the name of the owner thereof. Every such sale or taking shall be of the whole estate and not of the undivided interest of any joint owner thereof.

Historical and Statutory Notes

St.1881, c. 303, § 4.
P.S.1882, c. 12, § 48.
St.1888, c. 390, § 56.
R.L.1902, c. 13, § 56.
St.1909, c. 490, pt. 2, § 57.

§ 57. Affidavit of collector, etc.; evidence

The affidavit of the collector, deputy collector or disinterested person reciting the proceedings required by law in the sale of land for taxes, with copies of the advertisement and notices annexed thereto, recorded within three months after such sale in the registry of deeds, shall be competent evidence of demand, notice and service.

Historical and Statutory Notes

St.1794, c. 68.
R.S.1836, c. 8, §§ 22, 23.
G.S.1860, c. 12, §§ 27, 32.
St.1878, c. 266, § 5.
P.S.1882, c. 12, §§ 34, 45.
St.1888, c. 390, §§ 39, 53.
St.1892, c. 109, § 1.
R.L.1902, c. 13, § 57.
St.1909, c. 490, pt. 2, § 58.

§ 57A. Payment by check not duly paid; penalty

If any check in payment of any tax, interest, penalty, fee or other charge imposed under chapters fifty-nine to sixty-one A, inclusive, or chapter eighty or for any other municipal service rendered is not duly paid there may, in addition to any other penalties provided by law, be paid as a penalty by the person who tendered such check, upon notice and demand by the city or town tax collector, in the same manner as the tax or other amount to which the check relates, an amount equal to one percent of the amount of such check; provided, however, that if the amount of such check is less than two thousand five hundred dollars, the penalty under this section shall be twenty-five dollars. Any person upon whom such a penalty is imposed may appeal to the commissioner who shall abate the same if he determines that such person tendered such check in good faith and with reasonable cause to believe that it would be paid.

Added by St.1979, c. 282. Amended by St.1989, c. 432.

§ 58. Payments by mortgagee; addition to debt

If the whole or any portion of a tax on land remains unpaid after it is due, the holder of a mortgage upon the land may pay to the collector such amount as is due and unpaid, with the accrued charges and expenses; and the amount so paid may be added to the mortgage debt.

Amended by St.1932, c. 2; St.1939, c. 250, § 2.

Historical and Statutory Notes

St.1856, c. 239, § 2.
G.S.1860, c. 12, § 39.
St.1878, c. 266, § 14.
P.S.1882, c. 12, § 52.
St.1888, c. 390, § 60.
R.L.1902, c. 13, § 62.
St.1909, c. 490, pt. 2, § 63.
St.1918, c. 257, § 54.
St.1919, c. 5.
St.1920, c. 2.

§ 59. Payments by mortgagors or mortgagees

If a tax on land is assessed to a mortgagor and mortgagee separately, any part thereof remaining unpaid on October first following its assessment may be paid by either party. If a mortgagee pays a tax, interest or costs thereon which by law or by the terms of the mortgage was payable by the mortgagor, the amount so paid shall be added to the mortgage debt. If it is by law or by the terms of the mortgage payable by the mortgagee, and is paid by the mortgagor, the amount so paid shall be deducted from the mortgage debt unless the parties have, in writing, otherwise agreed.

Amended by St.1933, c. 254, § 56.

Historical and Statutory Notes

St.1881, c. 304, § 5.
P.S.1882, c. 12, § 55.
St.1888, c. 390, § 63.
R.L.1902, c. 13, § 64.
St.1909, c. 490, pt. 2, § 65.

§ 60. Payments by other than fee owners

If a person other than the owner of the fee rightfully pays the taxes assessed on land to the collector or treasurer, before a taking or sale, the collector or treasurer shall at the request of the person so paying give him a certificate of such payment stating the name of the person to whom the land is taxed, of the person paying the tax, and a substantially accurate description of the land. Such collector or treasurer shall charge one dollar for each certificate so issued, and the money so received shall be paid into the town treasury. Such certificate being recorded in the registry of deeds within thirty days from its date shall be notice to all persons of such payment and of the lien therefor. A person whose tax is paid by another shall upon repaying the same have the same right to recover it from the town, if illegally assessed, which he would have had if the tax had been paid by him under written protest.

Amended by St.1945, c. 130.

Historical and Statutory Notes

St.1856, c. 239, §§ 1 to 3.
G.S.1860, c. 12, § 41.
P.S.1882, c. 12, §§ 54, 57.
St.1888, c. 390, §§ 62, 63, 65.
R.L.1902, c. 13, § 65.
St.1909, c. 490, pt. 2, § 66.

§ 61. Taxes subsequent to sale or taking

Whenever a town shall have purchased or taken real estate for payment of taxes the lien of the town on such real estate for all taxes assessed subsequently to the assessment for payment of which the estate was purchased or taken shall continue, and it shall be unnecessary for the town to take or sell said real estate for non-payment of said subsequent taxes, costs and interest; and on redemption from such taking or purchase, said subsequent taxes, costs and interest shall be paid to the town, and the payment shall be made a part of the terms of redemption, except that if any of the said subsequent taxes have not been certified by the collector to the treasurer to be added to the tax title account, then redemption may be made by payment only of the amount of the tax for which the estate was purchased or taken and of such subsequent taxes as shall have been so certified, together with costs and interest. The collector shall certify to the treasurer not later than September first of the year following that of their assessment all subsequent taxes which become part of the terms of redemption and the treasurer shall give him a certificate stating that the amount or amounts have been added to the tax title account or accounts and the collector shall be credited as if the tax had been paid in money. A city or town which has assigned a tax title held by it shall, after such assignment, have all the rights and powers to take or sell the real estate affected thereby, for the nonpayment of taxes, which it would have possessed had said city or town never been the holder of said tax title.

Amended by St.1933, c. 325, § 9; St.1934, c. 48; St.1936, c. 93, § 1.

Historical and Statutory Notes

St.1919, c. 263.

§ 61A. Lands subject to tax titles held by municipalities; taking for nonpayment of taxes

Anything contained in section sixty-one to the contrary notwithstanding, if a tax is a lien on land only part of which is subject to a tax title or tax titles held by the town or part of which is subject to a tax title held by the town and the remainder of which is subject to another tax title or tax titles held by the town, the tax shall not be certified as

provided in section sixty-one; but the collector shall take the land for the nonpayment of the tax as if no part of such land were subject to a tax title held by the town, except that the notice prior to the taking and the instrument of taking shall, after describing the land, state:—"A portion or all of this land is subject to a tax title or tax titles held by the Town [or City] of ". The tax title account set up for the tax title resulting from such a taking and the tax title account set up for the prior tax title or tax titles shall be cross-referenced by the treasurer; and no tax title the account for which is so cross-referenced shall be assigned by the town.
Added by St.1943, c. 188.

§ 62. Land taken or sold for taxes; redemption

Any person having an interest in land taken or sold for nonpayment of taxes, including those assessed under sections twelve, thirteen and fourteen of chapter fifty-nine, or his heirs or assigns, at any time prior to the filing of a petition for foreclosure under section sixty-five, if the land has been taken or purchased by the town and has not been assigned, may redeem the same by paying or tendering to the treasurer the amount of the tax title account of the land being redeemed, and interest at sixteen per cent upon the original sum for which the land was taken or sold, from the date of sale, and upon each sum certified in accordance with section sixty-one, from the date of certification, together with all charges lawfully added to the tax title account of such land subsequently to such taking or sale, or may redeem the same by paying or tendering to said treasurer installments on account of the tax title account, together with the full amount of interest, as aforesaid, to the date of payment of the amount of the tax title account or balance thereof remaining due at the time of such payment, and all charges lawfully added as aforesaid until the full amount of the tax title account, with interest as aforesaid and all such charges, is paid. Each such instalment shall be received, receipted for, and applied toward the redemption of the land so taken or purchased. The treasurer upon accepting any payment hereunder may extend the time during which proceedings for the foreclosure of all rights of redemption may not be instituted, for a period not exceeding 2 years beyond the time period provided by section 65. An extension granted hereunder shall be entered upon the tax title account, and a written statement thereof shall be given to the person who made the payment.

Any such person may so redeem by paying or tendering to a purchaser, other than the town, his legal representatives or assigns, or to the person to whom an assignment of a tax title has been made by the town, at any time prior to the filing of such petition for foreclosure, in the case of a purchaser the original sum and intervening taxes and costs paid by him and interest on the whole at said rate, or in the case of an assignee of a tax title from a town the amount stated in the instrument of assignment with additional interest on the principal amount at said rate from the date of said assignment. In each case he shall also pay or tender, for examination of title and a deed of release, not more than $3 in the aggregate, and in addition thereto the actual cost of recording the tax deed or evidence of taking and the instrument of assignment, if any. He may also redeem the land by paying or tendering to the treasurer the sum which he would be required to pay to the purchaser or to the assignee of a tax title, with $10 additional. When land is redeemed from a tax title held by a city or town, the city treasurer, or acting city treasurer, notwithstanding the provisions of the charter of his city, or the town treasurer, as the case may be, shall, in the name and on behalf of the city or town, execute, acknowledge and deliver an instrument, which need not be under seal, containing a reference to the record of the tax deed or instrument of taking sufficient to identify it and reciting that the city or town acknowledges satisfaction of the tax title account secured thereby. The instrument provided for herein shall specify the year for which, and the name of the person to whom, the tax for which the land was sold or taken was assessed, and shall also specify the land on which such tax was assessed. If a person other than the owner of the fee rightfully redeems, requesting that he be named in the instrument, the instrument shall include his name and, when duly recorded in the registry of deeds of the county or district where the land is situated, shall be notice to all persons of such payment. If the amount so paid for redemption is paid by a holder of a mortgage on the premises, the amount so paid may be added to the mortgage debt. Any person redeeming land from a tax title held by a city or town may, as a condition of redemption, be required by the city or town treasurer to pay to him the expense of recording the instrument of redemption; and, when such expense has been so paid, such treasurer shall be deemed to be authorized to record such instrument and shall forthwith cause the same to be filed for record in the proper registry of deeds. No person

shall knowingly collect or attempt to collect for the redemption of any such land a sum of money greater than that authorized by this section.

If in the opinion of the treasurer, there has been a substantial or misleading error or irregularity in the amount of any item of water, sewer use or municipal light rates or charges, or interest thereon or costs relative thereto, included in a tax title account, or in connection with the proceedings with respect to any of them, he may accept in redemption the amount of the tax title account less the amount of such items, including interest thereon after their addition to any tax under applicable provisions of law. If in such case the tax title was held by the city or town, said treasurer shall make an entry in his books of the amount so deducted and of the reason for the deduction, which shall relieve him of further responsibility therefor. If the tax title was held by a person other than the city or town, the treasurer shall pay to such person the amount of the account without deduction and shall make a similar entry, which shall entitle him to credit for the excess so paid.

Nothing in this section nor in sections sixty-five to seventy-five, inclusive, shall be construed to prevent the title of a person or a city or town purchasing land at a sale under section seventy-nine or eighty from becoming absolute without any foreclosure proceedings under said sections sixty-five to seventy-five, inclusive.

Amended by St.1933, c. 325, § 10; St.1934, c. 218; St.1935, c. 278; St.1935, c. 414, § 2; St.1936, c. 392, § 2; St.1938, c. 415, § 5; St.1941, c. 231; St.1947, c. 133; St.1966, c. 263, § 1; St.1970, c. 235, § 1; St.1976, c. 250, § 3; St.1979, c. 503, § 2; St.1980, c. 261, § 17; St.1981, c. 340, § 1; St.2004, c. 295, § 7, eff. Nov. 11, 2004; St.2006, c. 354, §§ 1, 2, eff. Feb. 7, 2007.

Historical and Statutory Notes

St.1785, c. 70, § 7.
R.S.1836, c. 8, § 32.
St.1848, c. 166, §§ 6, 8.
St.1850, c. 98, §§ 1, 2.
G.S.1860, c. 12, §§ 36, 37.
St.1878, c. 266, §§ 9, 14.
St.1879, c. 73, § 94.
St.1881, c. 304, § 4.
P.S.1882, c. 12, §§ 49, 50.
St.1888, c. 390, §§ 57, 58.
St.1891, c. 288.
R.L.1902, c. 13, §§ 58 to 60.
St.1902, c. 443.
St.1905, c. 325, § 1.
St.1909, c. 490, pt. 2, §§ 59 to 61.
St.1915, c. 237, § 16.
St.1918, c. 257, § 53.
St.1919, c. 5.
St.1920, c. 2.
St.1924, c. 3.
St.1925, c. 51, 77.
St.1925, c. 241, § 5.
St.1928, c. 10.

§ 62A. Municipalities; payment agreements

Municipalities may by bylaw or ordinance authorize payment agreements between the treasurer and persons entitled to redeem parcels in tax title. Such agreements shall be for a maximum term of no more than 5 years or such lesser period as the ordinance or bylaw may specify and may waive not more than 50 per cent of the interest that has accrued on the amount of the tax title account, subject to such lower limit as the ordinance or bylaw may specify. An ordinance or bylaw under this section shall provide for such agreements and waivers uniformly for classes of tax titles defined in the ordinance or bylaw.

Any such agreement must require a minimum payment at the inception of the agreement of 25 per cent of the amount needed to redeem the parcel. During the term of the agreement the treasurer may not bring an action to foreclose the tax title unless payments are not made in accordance with the schedule set out in the agreement or timely payments are not made on other amounts due to the municipality that are a lien on the same parcel.

Added by St.2004, c. 295, § 8, eff. Nov. 11, 2004.

§ 63. Payments to treasurer instead of purchaser; certificate of release

The treasurer shall receive money paid to him instead of the purchaser or assignee of a tax title, if the amount tendered equals the amount stated in the instrument of assignment or collector's deed plus additional interest at the rate stated in section 62 from the date of sale or assignment to the date the treasurer receives such payment, and give to the person paying it a certificate specifying the amount paid, the name of the person to whom and the real estate on which the tax was originally assessed, and the registry of deeds and the book and page of the records therein where the collector's deed or evidence of taking and the instrument of assignment, if any, is recorded; and the recording of the certificate in said registry shall extinguish all right and title acquired under the collector's deed or evidence of taking. The treasurer shall forthwith pay over all money so paid, to the person entitled thereto as determined by him, ex-

cept that he shall retain $10 for the use of the town and shall account to it therefor.

Amended by St.1933, c. 325, § 11; St.1936, c. 392, § 3; St.1970, c. 235, § 2; St.1976, c. 250, § 4; St.1979, c. 503, § 3; St.2004, c. 295, § 8, eff. Nov. 11, 2004.

Historical and Statutory Notes

St.1848, c. 166, § 7.
G.S.1860, c. 12, § 38.
P.S.1882, c. 12, § 51.
St.1888, c. 390, § 59.
R.L.1902, c. 13, § 61.
St.1902, c. 443.
St.1905, c. 325, § 2.
St.1909, c. 490, pt. 2, § 62.

§ 64. Absolute title after foreclosure

The title conveyed by a tax collector's deed or by a taking of land for taxes shall be absolute after foreclosure of the right of redemption by decree of the land court as provided in this chapter. The land court shall have exclusive jurisdiction of the foreclosure of all rights of redemption from titles conveyed by a tax collector's deed or a taking of land for taxes, in a proceeding provided for in sections sixty-five to seventy-five, inclusive.

Historical and Statutory Notes

St.1915, c. 237, § 3.

§ 65. Rights of redemption; petition for foreclosure; legal fees

Except as provided in section sixty-two, whoever then holds the title to land acquired by a sale or taking for taxes may bring a petition in the land court for the foreclosure of all rights of redemption of said land either after six months from the sale or taking, or in case of a city or town, at any time following the sale or taking if the buildings thereon have been found to be abandoned property pursuant to section eighty-one A, or there has been a certification pursuant to section 81B that the redemption amount as determined pursuant to section 62 exceeds the assessed value of the parcel; provided, however, a petition for the foreclosure of all rights of redemption may be filed at any time following the consent in writing of the record owner. Such petition shall be made in the form to be prescribed by said court and shall set forth a description of the land to which it applies, with its assessed valuation, the petitioner's source of title, giving a reference to the place, book and page of record, and such other facts as may be necessary for the information of the court. Two or more parcels of land may be included in any petition brought by a town, whether under a taking or as purchaser of such title or titles, if such parcels are in the same record ownership at the time of bringing such petition. The land court in each petition filed by a city or town may, upon motion, order the payment of legal fees to a city or town, which amount shall be added to the tax title account of the land to which the right of redemption is being foreclosed; in no event shall the legal fees awarded exceed the actual costs incurred and the judge shall consider the taxpayer's ability to pay said fees in any such fee award.

Amended by St.1933, c. 325, § 12; St.1938, c. 305; St.1971, c. 716, § 1; St.1973, c. 1215, § 5; St.1978, c. 345; St.1984, c. 465, § 2; St.2002, c. 2, § 3; St.2003, c. 46, § 70, eff. July 31, 2003.

Historical and Statutory Notes

St.1915, c. 237, § 4.

§ 66. Title examinations; notice

Upon the filing of such a petition the court shall forthwith cause to be made by one of its official examiners an examination of the title sufficient only to determine the persons who may be interested in the same, and shall upon the filing of the examiner's report notify all persons appearing to be interested, whether as equity owners, mortgagees, lienors, attaching creditors or otherwise, of the pendency of the petition, the notice to be sent to each by registered mail and return of receipt required, the addresses of respondents, so far as may be ascertained, being furnished by the petitioner. Such other and further notice by publication or otherwise shall be given as the court may at any time order. The notice, to be addressed "To all whom it may concern", shall contain the name of the petitioner, the names of all known respondents, a description of the land and a statement of the nature of the petition, shall fix the time within which appearance may be entered and answer filed, and shall contain a statement that unless the party notified shall appear and answer within the time fixed a default will be recorded, the petition taken as confessed, and the right of redemption forever barred.

Amended by St.1935, c. 224, § 1.

Historical and Statutory Notes

St.1915, c. 237, § 5.

§ 67. Default

After the return day fixed, to be at least twenty days after the time of the actual issuance of notice, the court shall, if satisfied that the notice has been properly given, on motion of the petitioner enter an order defaulting all persons failing to appear and

answer, and decreeing that the petition as to them be taken as confessed.

Amended by St.1935, c. 224, § 2.

Historical and Statutory Notes

St.1915, c. 237, § 6.

§ 68. Answer; offer of redemption; hearing

Any person claiming an interest, on or before the return day or within such further time as may on motion be allowed by the court, shall, if he desires to redeem, file an answer setting forth his right in the land, and an offer to redeem upon such terms as may be fixed by the court. Thereupon the court shall hear the parties, and may in any case in its discretion make a finding allowing the party to redeem, within a time fixed by the court, upon payment to the petitioner of an amount sufficient to cover the original sum, costs, interest at the time rate of sixteen per cent per annum and all subsequent taxes, cost and interest to which the petitioner may be entitled under sections sixty-one and sixty-two, together with the costs of the proceeding and such counsel fee as the court deems reasonable. The court may impose such other terms as justice and the circumstances warrant.

If the land has been divided by sale, mortgage, upon a petition for partition or otherwise and such division has been duly recorded in the registry of deeds, the court may permit redemption of any of the portions into which the land has been divided, upon such terms as it may deem just and equitable toward all parties and may make a decree under section sixty-nine barring redemption of the remaining portions.

Amended by St.1935, c. 224, § 3; St.1935, c. 354, § 1; St.1935, c. 414, § 3; St.1966, c. 263, § 2; St.1970, c. 235, § 3; St.1976, c. 250, § 5; St.1979, c. 503, § 4.

Historical and Statutory Notes

St.1915, c. 237, § 7.
St.1929, c. 207, § 1.

§ 69. Decree barring redemption; vacating decree; petition

If a default is entered under section sixty-seven, or if redemption is not made within the time and upon the terms fixed by the court under the preceding section, or if at the time fixed for the hearing the person claiming the right to redeem does not appear to urge his claim, or if upon hearing the court determines that the facts shown do not entitle him to redeem, a decree shall be entered which shall forever bar all rights of redemption. If no innocent purchaser for value has acquired an interest, such decree may be vacated in the discretion of the court upon petition filed by the petitioner at any time.

Amended by St.1935, c. 224, § 4; St.1945, c. 226, § 1.

Historical and Statutory Notes

St.1915, c. 237, § 8.

§ 69A. Decree barring redemption; time for vacating decree entered by person other than petitioner

No petition to vacate a decree of foreclosure entered under section sixty-nine and no proceeding at law or in equity for reversing or modifying such a decree shall be commenced by any person other than the petitioner except within one year after the final entry of the decree if the decree is entered on or after September first, nineteen hundred and forty-five or within one year after said date if the decree was entered prior to said date. If said foreclosure petition was filed for an unoccupied or abandoned building as set forth in sections one and eighty-one A, or there has been a certification pursuant to section 81B that the redemption amount as determined pursuant to section 62 exceeds the assessed value of the parcel, no petition to vacate a decree of foreclosure entered under section sixty-nine and no proceedings at law or equity for reversing or modifying such a decree shall be commenced by any person other than the petitioner except within ninety calendar days after the final entry of the decree, or within one year of the final entry of the decree, if the decree was entered prior to the effective date of this section. For any decree relating to a property which stands in the name of a deceased person or person under guardianship or conservatorship, a petition may be maintained for reversal or modification of such decree up to one year from the date of decree.

Added by St.1945, c. 226, § 2. Amended by St.1984, c. 465, § 3; St.2002, c. 2, § 4.

§ 70. Validity of title; questioning; decree of court

If a person claiming an interest desires to raise any question concerning the validity of such a title, he shall do so by answer filed in the proceeding on or before the return day, or within such further time as may on motion be allowed by the court, or else be forever barred from contesting or raising the question in any other proceeding. He shall also file specifications setting forth the matters upon which he relies to defeat the title; and unless such specifications are so filed, all questions of the

validity or invalidity of the title, whether in form of deed or proceedings relating to the sale or taking, shall be deemed to have been waived. Upon the filing of the specifications the court shall hear the parties, and shall enter a decree in conformity with the law on the facts found.

Amended by St.1935, c. 224, § 5.

Historical and Statutory Notes

St.1915, c. 237, § 9.

§ 71. Jury trials; waiver; framing issues

Any party may claim a jury trial on or before the return day, or within such further time as may on motion be allowed by the court, but unless so claimed the right to jury trial shall be deemed to be waived. Upon such a claim issues shall be framed therefor in accordance with the practice in the land court.

Amended by St.1941, c. 319, § 2.

Historical and Statutory Notes

St.1915, c. 237, § 10.

§ 72. Questions of law reported

Questions of law may be reported by the court or taken to the supreme judicial court for revision by any party aggrieved, in the same manner as in other proceedings in the land court.

Historical and Statutory Notes

St.1915, c. 237, § 11.

§ 73. Costs and fees; deposit by petitioner

The petitioner, at the time of filing his petition, shall deposit with the recorder a sum sufficient to cover the costs of the proceedings as estimated by the court, and the fees chargeable by the court as the case proceeds shall be computed in accordance with section thirty-nine of chapter two hundred and sixty-two, so far as applicable, except that the charge for examination of title shall be the actual amount allowed the title examiner by the court. The money paid into court as aforesaid by the petitioner shall be disbursed directly by the recorder for necessary expenses incurred, and the balance of fees chargeable in each finished case shall be paid over quarterly to the commonwealth.

Historical and Statutory Notes

St.1915, c. 237, § 12.

§ 74. Repealed, 1973, 515, Sec. 1

§ 75. Practice and procedure

Practice and procedure under sections sixty-four to seventy-three, inclusive, sections seventy-six, seventy-six A, and eighty B, not therein otherwise provided for, shall conform as nearly as possible to the land court practice, rules, regulations and procedure under chapter one hundred and eighty-five insofar as the same may be applicable, except that no memorandum stating the disposition of the case shall be made. Notice of filing the petition shall be recorded in the registry of deeds as provided for in land registration proceedings, and all final decrees shall be recorded.

Amended by St.1936, c. 189, § 1; St.1973, c. 515, § 2.

Historical and Statutory Notes

St.1915, c. 237, § 13.

§ 76. Jurisdiction of land court; petition for redemption

In addition to its jurisdiction to allow a party to redeem under section sixty-eight, the land court shall have jurisdiction as to redemption in all cases of taking or sale of land for non-payment of taxes if relief is sought before the filing of a petition under section sixty-five for foreclosure of the right of redemption, and may grant such right of redemption or other relief as justice may require, fixing the terms therefor, or may refuse the same.

Amended by St.1935, c. 318, § 1; St.1936, c. 189, § 2; St.1973, c. 515, § 3.

Historical and Statutory Notes

St.1849, c. 213, § 2.
St.1856, c. 239, § 4.
G.S.1860, c. 12, § 42.
St.1878, c. 266, § 14.
P.S.1882, c. 12, § 66.
St.1888, c. 390, § 76.
St.1900, c. 177.
R.L.1902, c. 13, § 75.
St.1905, c. 325, § 3.
St.1908, c. 226.
St.1909, c. 490, pt. 2, § 76.
St.1915, c. 237, §§ 15, 26.
St.1918, c. 257, § 58.
St.1919, c. 5.
St.1920, c. 2.

§ 76A. Partial redemption; divided lands

If real estate has been divided by sale, mortgage, upon a petition for partition or otherwise and such division has been duly recorded in the registry of deeds, and such real estate has been taken or sold for failure to pay a tax assessed on it as a whole, the land court, upon petition by the owner or

mortgagee of any portion thereof, may, after notice to all other persons interested in any portion of such real estate, permit the petitioner to redeem the portion in which he is interested, in the manner provided by section seventy-six, upon such terms as it may deem just and equitable both toward the petitioner and toward such other persons.

If the plat of a proposed subdivision of land taken or sold for failure to pay a tax assessed on it as a whole, in any city or town having a planning board established under section eighty-one A of chapter forty-one, or in any other city or town which has a board of survey and has accepted the subdivision control law, has been approved by such planning board or board of survey and such approval has been filed in the office of such planning board or board of survey, or if, in any other city or town, the plan of a proposed subdivision of land so taken or sold has been duly recorded in the registry of deeds, the land court, upon petition by the owner or mortgagee of the whole of the land or any portion thereof for redemption of any subdivision thereof, may, after notice to all other persons interested in such land, permit the petitioner to redeem such subdivision, in the manner provided by section seventy-six, upon such terms as it may deem just and equitable both toward the petitioner and toward such other persons, provided it finds that such redemption will not adversely affect the interests of the city or town in which such land is situated. Such redemption may be permitted whether the approval of the plat or the recording of the plan was before or after said tax taking or sale.
Added by St.1935, c. 354, § 2. Amended by St.1939, c. 181; St.1953, c. 674, § 10.

§ 76B. Errors or irregularities in water, sewer use or municipal light rates and charges

Errors or irregularities in respect to water, sewer use or municipal light rates and charges included in a tax title account, including interest and costs, or in the proceedings relating thereto, shall not render invalid a tax title otherwise valid; but in proceedings under sections sixty-four to seventy-six A, inclusive, such errors or irregularities shall be taken into consideration in fixing the terms of redemption, whether upon petition for foreclosure or for redemption, and the court shall specifically indicate in any decree fixing the terms of redemption any amounts excluded from the account by reason of such errors or irregularities. The city or town in which the land lies shall pay to a person holding such a tax title the amounts so indicated, with interest at the rate of six per cent per annum from the date of redemption and, if the city or town fails to make such payment within three months after written demand therefor made upon the city or town treasurer, such person may recover the same in an action of contract brought against the city or town within one year after the date of redemption. The city or town treasurer shall notify the board or officer in charge of the water, sewer or municipal light department of the amount so excluded by court decree.
Added by St.1938, c. 415, § 6. Amended by St.1981, c. 340, § 2.

§ 76C. Tax titles held by towns; notice of assignments, redemptions or foreclosures

Whenever a tax title held by a town shall be assigned, or the land subject to a tax title so held shall be redeemed or the right of redemption thereunder foreclosed, the treasurer shall forthwith send written notice of the assignment, redemption or foreclosure, as the case may be, to the collector and, upon their request, to the assessors.
Added by St.1945, c. 268.

§ 77. Foreclosure by municipalities; tax titles; covenants calling for money payments by owners

After foreclosure by a town of the rights of redemption under a tax title or taking, as hereinbefore provided, the land shall thereafter be held and disposed of like any land belonging to it and held for municipal purposes, and shall not while so held be assessed for taxes.

Before foreclosure so much of the provisions of any covenant or agreement running with the land as calls for the payment of money by the owner thereof shall not be enforceable against a town which is the owner of record of such land under a tax title or taking, except as hereinafter provided. After foreclosure the town while it is the owner of record of such land may apply to the commissioner for an extension of the time during which such provisions shall not be enforceable against it. The commissioner shall have the power in his discretion to grant such an extension for a period not exceeding one year from the date of the foreclosure, and thereafter, from time to time, upon similar applications, may in his discretion grant similar additional extensions. Any such extension shall be in writing, may be recorded in the appropriate

registry of deeds, and if so recorded within thirty days from its date, shall be conclusive in favor of the town. In no event, however, shall such provisions calling for the payment of money be so suspended and inoperative during any period in which such town directly or indirectly in any capacity accepts or receives the benefit of such covenant or agreement or of any right or privilege created or affected thereby.

Amended by St.1938, c. 339, § 3; St.1953, c. 654, § 37; St.1978, c. 514, § 86; St.1986, c. 557, § 69.

Historical and Statutory Notes

St.1915, c. 237, § 18.

§ 77A. Sale by municipalities; land acquired through foreclosure; recording deeds

In case of the sale of land acquired by a city or town through foreclosure under any provision of this chapter, the purchaser shall be required as a condition of the sale to authorize the official or officials executing the deed on behalf of the city or town to record the same, and the expense of such recording shall be paid by such purchaser. Such official or officials shall cause such deed to be recorded in the proper registry of deeds within fifteen days after the execution thereof.

Added by St.1945, c. 78.

§ 77B. Management, sale, or lease by municipalities; land acquired through foreclosure or under Sec. 80; notice

The mayor of any city or the selectmen of any town which holds property acquired by foreclosure of tax titles or acquired under section eighty may appoint a custodian who shall have the care, custody, management and control of all property heretofore or hereafter so acquired by said city or town. The custodian shall serve during the pleasure of the mayor or selectmen and shall receive as his compensation, if any, a sum fixed by the mayor or by the selectmen.

The custodian, acting on behalf of the city or town, may, notwithstanding any provision of law, ordinance or by-law inconsistent herewith, sell at public auction any such property, first sending a notice thereof as herein provided to the owner of record immediately prior to the acquisition by the city or town of the title to such property. Such notice shall contain a description of the property to be sold sufficient to identify it, shall state the date, time and place appointed for the sale thereof and the terms and conditions of such sale, and shall be sent by registered mail to the address of such owner as appearing upon the records of the assessors of the city or town, at least fourteen days before such sale. The custodian shall also, not less than fourteen days before such appointed date, post a similar notice in two or more convenient and public places in the city or town. Failure to send or to post a notice as herein provided, or any insufficiency in the notice sent or posted, shall not invalidate the title to any property sold hereunder. The custodian may reject any and all bids at such sale or any adjournment thereof if in his opinion no bid is made which approximates the fair value of the property, and he may adjourn the sale from time to time for such periods as he deems expedient, giving notice thereof at the time and place appointed for the sale or for any adjournment thereof. After any such sale and upon payment by the purchaser to the city or town of the amount of a bid accepted by the custodian, the treasurer of said city or town shall, on its behalf, execute and deliver any instrument necessary to transfer the title of the city or town to any such property sold under this section. This section shall not be construed to prevent a city or town from disposing of such property under section three of chapter forty, or in any other manner authorized by law.

Any officer or board which executes a deed to convey property acquired by a city or town by foreclosure of a tax title or under section eighty, shall not execute such deed to any person unless such person has submitted to said board or officer a statement signed under the pains and penalties of perjury that neither he nor any person who would gain equity in the property as a result of such conveyance has ever been convicted of a crime involving the willful and malicious setting of a fire or of a crime involving the aiding, counseling or procuring of a willful and malicious setting of a fire, or of a crime involving the fraudulent filing of a claim for fire insurance; or is delinquent in the payment of real estate taxes to the city or town in which the property is being sold, or if delinquent, that a pending application for abatement of such tax, or a pending petition before the appellate tax board or the county commissioners has been filed in good faith. If there is more than one grantee of such deed, each grantee must file such statement, and no such deed shall be valid unless it contains a recitation that the board or officer granting the deed has received such statement.

If the custodian is of the opinion that a sale of any such property is not immediately practicable,

the custodian, acting on behalf of the city or town, may, subject to the approval of the mayor or the selectmen, notwithstanding any provision of law, ordinance or by-law inconsistent herewith, lease such property for a term not exceeding three years, and may on behalf of the city or town execute and deliver such lease.

The custodian, subject to appropriation, may employ one or more assistants as may be necessary for the proper performance of his duties. Such assistants shall receive as compensation such amounts as may be approved by the mayor or by the selectmen.

Added by St.1947, c. 224, § 1. Amended by St.1985, c. 803.

§ 77C. Deeds accepted by municipalities in lieu of foreclosure; taxes

Cities and towns, acting through their legislative bodies, may accept a deed, in which all persons who have an interest in title join as grantors, in lieu of foreclosure to any parcel of land within the city or town which meet the requirements set forth in this section. Upon acceptance and recording of that deed, any real estate taxes and other municipal charges and liens shall be treated as having been paid, and shall be accounted for by the city or town in the same manner as if a tax title foreclosure had been completed. The procedure provided for in this section shall apply only to property upon which there are no other liens or encumbrances other than the liens of the city or town. No grantor under this section may purchase or otherwise acquire from the city or town any parcel of land acquired by the city or town under this section.

Added by St.2002, c. 2, § 5.

§ 78. Repealed, 1936, 194

§ 79. Sale without foreclosure; inquiries

After ninety days from the taking or purchase by a town of any parcels of land for non-payment of taxes, the commissioner may, and on written application of the town treasurer shall, inquire into the value of such parcels and the validity of tax titles held thereon. As a part of such inquiry the commissioner shall, upon written request therefor by any person in interest, hear such person relative to any matter pertaining to such inquiry. If the commissioner is of the opinion that such parcels are of insufficient value to meet the taxes, interest and charges including the payment of fifty dollars to a city or town as the legal fee for proceedings under this section, and all subsequent taxes and assessments thereon, together with the expenses of a foreclosure under section sixty-nine, including the payment of fifty dollars to a city or town as the legal fee for proceedings under this section, that none of such parcels exceeds $15,000 in value, and that the facts essential to the validity of the tax titles on such lands have been adequately established, he shall make affidavit of such finding, which shall be recorded in the registry of deeds for the district wherein the land lies. The dollar value of such parcels specified in the previous sentence shall be increased every January 1 by the percentage increase of the Consumer Price Index for Urban Consumers prepared by the Bureau of Labor Statistics of the United States Department of Labor for the previous calendar year.

The commissioner may require the treasurer to include in his application a statement under the penalties of perjury setting forth such information appearing in the records of the assessors and of the collector and tending to establish the validity of the tax titles on such parcels of land as the commissioner deems meet. The statement so made, or such portion thereof as the commissioner finds pertinent, may be incorporated in his affidavit and, when recorded, shall be prima facie evidence of such facts.

Upon the recording of the affidavit the treasurer may sell all the parcels included therein, severally or together, at public auction to the highest bidder, first giving notice of the time and place of sale by publication fourteen days at least before the sale in a newspaper published in the town, if any, otherwise in the county and by posting a notice of the sale in some convenient and public place in the town fourteen days at least before the sale; provided, that the treasurer at such auction may reject any bid which he deems inadequate. If the sale under this section shall not be made within four years from said taking or purchase, it shall be made by the treasurer for the time being when he deems best, or at once upon service on him of a written demand by any person interested therein. The treasurer shall execute and deliver to the highest bidder whose bid has not been rejected as inadequate a deed without covenant except that the sale has in all particulars been conducted according to law. The purchaser shall be required as a condition of the sale to authorize the treasurer executing the deed on behalf of the city or town to record the same, and the expense of such recording

shall be paid by such purchaser. The treasurer shall cause such deed to be recorded in the proper registry of deeds within fifteen days after the execution thereof. Title taken pursuant to a sale under this section shall be absolute upon the recording of such deed of the treasurer.

If the amount received from the sale is more than the taxes, interest and charges including the payment of fifty dollars to a city or town as the legal fee for proceedings under this section, and subsequent taxes and assessments, on all lands included in the sale, together with the expenses thereof, the balance shall be deposited with the town treasurer to be paid to the person entitled thereto if demanded within five years, otherwise it shall enure to the town. If such surplus results from the sale of several parcels for a lump sum, it shall be held as aforesaid for the several owners in proportion to the prices at which the several parcels were originally taken or purchased by the town.

The treasurer shall include the payment of fifty dollars to a city or town as the legal fee for proceedings under this section and said amount shall be added to the tax title account of the land being sold at public auction and shall be included in the amount due for redemption if redemption is made prior to said sale.

Amended by St.1933, c. 325, § 14; St.1935, c. 173, § 1; St.1941, c. 594, § 1; St.1963, c. 201; St.1966, c. 114, § 1; St.1968, c. 157; St.1968, c. 353, § 1; St.1973, c. 1215, § 6; St.1979, c. 162, §§ 1, 2; St.1979, c. 451; St.1985, c. 89; St.2000, c. 159, § 118; St.2002, c. 2, §§ 6, 7.

Historical and Statutory Notes

St.1915, c. 56, § 1.
St.1915, c. 237, § 2.
St.1918, c. 257, § 52.
St.1919, c. 5.
St.1920, c. 2.
St.1925, c. 241, § 6.
St.1931, c. 79, § 1.

§ 80. Lack of or inadequate bids; sales without foreclosure

If no person bids at such a sale or if no bid deemed adequate by the treasurer is made thereat and if the sale has been adjourned one or more times, the treasurer shall then and there make public declaration of the fact, and if no bid or no bid deemed adequate as aforesaid is then made he shall give public notice that he purchases for the town by which the tax is assessed; or if the person to whom the land is sold does not within ten days pay to the treasurer the sum bid by him the sale shall be void and the town shall be deemed to be the purchaser of the land. If the town becomes the purchaser hereunder, the treasurer shall execute to it a deed which shall set forth the fact that no bid or no bid deemed adequate as aforesaid was made at the sale or that the purchaser failed to pay the amount bid, as the case may be. Such deed shall not be valid unless recorded within sixty days after the sale under this section; and the title of the town to land conveyed thereby shall be absolute upon the recording of said deed in the proper registry of deeds within such sixty days.

Amended by St.1933, c. 325, § 15; St.1935, c. 173, § 2; St.1941, c. 594, § 2.

Historical and Statutory Notes

St.1915, c. 56, § 2.
St.1925, c. 241, § 7.
St.1931, c. 79, § 2.

§ 80A. Title to land conveyed under Sec. 79 or Sec. 80; questioning barred

Any person, having a right of redemption or any other interest in the land conveyed or purporting to be conveyed under section seventy-nine or section eighty, upon whom service of the notice of sale provided in said section seventy-nine has been made by registered mail, who, prior to the sale, neither redeems the land nor brings proceedings to enjoin the sale, shall, upon the recording of the deed as required by said section seventy-nine or said section eighty, be forever barred from raising any question concerning the validity of the title conveyed thereby, and a statement contained in the treasurer's deed that such service has been made, naming the persons who were served by registered mail, shall be prima facie evidence thereof.

Added by St.1941, c. 594, § 3.

§ 80B. Title acquired under Sec. 79 or Sec. 80; petition to establish; procedure

The holder of a title acquired under section seventy-nine or eighty, whether acquired before or after the effective date of this section, may file in the land court a petition to establish such title by requiring all persons who would have an interest in the land involved except for either the petitioner's title or his chain of title originating under section seventy-nine or eighty to show cause why they should not bring an action to try any claim or claims which they may have adverse to the petitioner's title arising out of the tax proceedings upon which such title was based. The petition shall set forth on oath the petitioner's source of

title, giving a reference to the place, book and page of record of the deed under section seventy-nine or eighty upon which the petitioner relies, the description of the land involved which appeared in the tax deed or instrument of taking upon which such deed under section seventy-nine or eighty was based, the names of all such persons known to the petitioner and such other facts as may be necessary for the information of the court; but the petitioner need not allege in such petition nor show during the hearing thereof any error or irregularity in the tax proceedings upon which such title depends or any other defect in such title. The petition shall be in the alternative praying that such persons be ordered to show cause why they should not bring action to try such claim or claims or, if such persons do not appear within the time fixed or, having appeared, disobey the lawful order of the court to try their claim or claims, that the court enter a decree that they be forever barred from having or enforcing any such claim or claims adversely to the petitioner, his heirs or assigns, in the land described.

If any such persons are unascertained, not in being, unknown or out of the commonwealth, or cannot be actually given notice and made personally amenable to the decree of the court, they may be made respondents and, if they are unascertained, not in being or unknown, may be described generally, as the heirs or legal representatives of AB, or such persons as shall become heirs, devisees or appointees of CD, a living person, or persons claiming under AB.

Upon the filing of the petition, the court shall notify all such persons of the pendency of the petition, the notice to be sent to each by registered mail and the return of receipt to be required, the addresses of such persons, so far as may be ascertained, being furnished by the petitioner. Such other and further notice by publication or otherwise shall be given as the court may at any time order. The notice, to be addressed "To all whom it may concern", shall contain the name of the petitioner, the names of all respondents named in the petition, the description of the land, and a statement of the nature of the petition, shall fix the time within which appearance may be entered and shall contain a statement that unless the persons notified shall appear within the time fixed that they shall be forever barred from having or enforcing any such claim or claims adversely to the petitioner, his heirs or assigns, in the land described.

If, after notice has been given and the time limited in such notice for the appearance of the respondents has expired, the court finds that there are or may be respondents not actually given notice who have not appeared, or who are minors, or persons under disability, or unascertained, unknown or out of the commonwealth, it may of its own motion, or on the representation of any party, appoint a disinterested person to act as guardian ad litem for any such respondents. The compensation of the guardian ad litem shall be determined by the court and paid by the petitioner.

After all the respondents have been given notice as hereinbefore provided and after the appointment of a guardian ad litem, if such appointment has been made, the court may proceed as though all respondents had been actually notified. Such petition shall be a proceeding in rem against the land, and any decree entered as hereinafter provided shall operate directly on the land and have the force of a release made by or on behalf of all respondents of all claims adverse to the petitioner's title.

The persons so notified shall by answer show why they should not be required to bring an action to try such claim or claims, and the court shall enter an appropriate decree relative to bringing and prosecuting such action. If the persons so notified do not appear within the time fixed or, having appeared, disobey the lawful order of the court to try their claim or claims, the court shall enter a decree that they be forever barred from having or enforcing any such claim or claims adversely to the petitioner, his heirs or assigns, in the land described; provided, that such decree shall not be entered unless the petitioner has proved to the court that the collector's deed or the instrument of taking, as the case may be, upon which the petitioner's title depends, was duly recorded within the time provided therefor by law. No petition to vacate such decree and no proceeding at law or in equity for reversing or modifying such a decree shall be commenced by any person except within one year after the final entry of the decree if the decree is entered on or after September first, nineteen hundred and forty-six, or within one year after said date if the decree was entered prior to said date.

If, as the result of a petition filed under this section, the petitioner's title is adjudged invalid by a court of competent jurisdiction because of errors or irregularities in the tax proceedings upon which it was based, the clerk, upon request, shall issue a

certificate to that effect. The treasurer of the city or town where the land affected by such title is situated, upon receipt of a release by the holder of said title of all interest which he may have under it, together with such certificate, shall refund to such holder the amount paid therefor but not exceeding the amount received by the city or town.

Added by St.1941, c. 594, § 3. Amended by St.1946, c. 302; St.1973, c. 515, § 4; St.1989, c. 341, § 42.

§ 80C. Title to land conveyed under Sec. 79 or Sec. 80; curing defects

When any city or town has conveyed or sold any land under section seventy-nine or section eighty by an instrument in writing conveying or purporting to convey such land, and said instrument is duly recorded in the registry of deeds for the district wherein such land is situated and a period of twenty years elapses after the instrument is accepted for record, and the notice or procedure for the taking and sale or conveyance under this chapter or the instrument or record thereof because of a defect, irregularity, or omission, fails to comply in any respect with any requirement of law relating thereto or the instrument or record thereof shall, notwithstanding such defects, irregularities, or omissions be effective for all purposes to the same extent as though such notice or procedure or the instrument or record thereof had originally not been subject to any such defects, irregularities, or omissions, unless within said period of twenty years a proceeding is commenced on account of such defect, irregularity, or omission and notice thereof is duly recorded in said registry of deeds and indexed and noted on the margin of said instrument of conveyance and in the event of such proceeding, unless relief is thereby in due course granted.

Added by St.1986, c. 283, § 1.

§ 81. Repealed, 1925, 241, Sec. 8

§ 81A. Land with unoccupied buildings; inspection; abandonment; foreclosure of rights of redemption

Whenever a city or town shall have purchased or taken land for non-payment of taxes under section forty-three or fifty-three, respectively, and the treasurer of said city or town has reason to believe that the buildings located thereon are unoccupied, he shall forthwith request the inspector of buildings, or such other person designated by the mayor or board of selectmen to perform the duties of the inspector of buildings as defined in section six of chapter one hundred and forty-three, to inspect the buildings. Said inspection may be in addition to and need not be in conjunction with the inspection as performed by the inspector of buildings pursuant to said section six, and shall not preclude a city or town from taking any action prescribed in said chapter one hundred and forty-three, relative to said land.

If the inspector of buildings determines that said buildings are abandoned property he shall notify the record owner, and, if appropriate, the mortgagee in possession or lessee, of his finding. Such notice shall include a statement that the inspection was conducted at the request of the local treasurer and that the failure of the record owner, or other interested party, to correct the conditions described in the notice within thirty days of receipt or publication of the notice will result in proceedings to foreclose the record owner's right of redemption. Such notice may be served in the manner required by law for the service of subpoenas on witnesses in civil cases or may be published. The inspector of buildings shall also, at the time of service or publication, post a copy of the notice in two or more convenient public places.

If at the expiration of the thirty-day period, the inspector of buildings is of the opinion that action has not been initiated to correct the conditions described in the notice, he shall forthwith notify the local treasurer in writing, under penalties of perjury, that the buildings on the land have been found to be abandoned property. Such written notice shall include therein the facts and circumstances which formed the basis of his findings, and a copy of the notice served on the record owner, or if service was by publication, an account of the steps taken to locate the record owner and a copy of the published notice.

Upon receipt of such written notice the treasurer shall immediately notify the commissioner in writing, under the penalties of perjury, of such finding. Said notice to the commissioner shall include a copy of the notice filed by the inspector of buildings, such information appearing in the records of the assessors and of the collector and tending to establish the validity of the tax title on such land, and any further information that the commissioner may deem appropriate.

If the commissioner is of the opinion that the facts and circumstances as found by the inspector of buildings are sufficient to establish that the

buildings on the land so taken or purchased are abandoned property and that the facts essential to the validity of the tax title on such land have been adequately established, he shall make an affidavit of such finding which shall be recorded in the registry of deeds for the district wherein the land lies.

The commissioner shall incorporate in his affidavit the statements of the inspector of buildings and the treasurer, or such portions thereof as the commissioner finds pertinent, and when recorded, shall be prima facie evidence of such facts.

Upon the recording of the affidavit the treasurer shall bring a petition in the land court pursuant to section sixty-five for the foreclosure of all rights of redemptions of said land.

Added by St.1973, c. 1215, § 7.

§ 81B. Purchase of land or taking of land for nonpayment of taxes under Sec. 43 or Sec. 53; redemption amount exceeds assessed value; foreclosure of rights of redemptions

Whenever a city or town shall have purchased or taken land for nonpayment of taxes under section 43 or 53, and the treasurer of the city or town certifies that the redemption amount as determined pursuant to section 62 exceeds the assessed value of the parcel, the treasurer shall make an affidavit of such certification which shall be recorded in the registry of deeds for the district wherein the land lies. Upon the recording of the affidavit, the treasurer shall bring a petition in the land court pursuant to section 65 for the foreclosure of all rights of redemptions of the land.

Added by St.2002, c. 2, § 8.

§ 82. Notice to holder of invalid tax title; release of interest

If a collector has reasonable cause to believe that the title to land sold for non-payment of taxes or of assessments, a lien for which is enforceable by a sale of land, is invalid by reason of an error, omission or informality in the assessment or sale, he may, within two years after the date of the deed of such land, give notice to the record holder of the tax title, requiring him, within thirty days thereafter, to release any interest which he may have in such land under said deed, and to receive from the town the amount paid therefor with interest at ten per cent or to file with the collector a written statement that he refuses to release such interest. Such statement, if recorded in the registry of deeds, shall release the town from any liability upon the warranty in said deed.

Amended by St.1945, c. 267, § 1.

Historical and Statutory Notes

St.1878, c. 266, § 2.
P.S.1882, c. 12, § 59.
St.1888, c. 390, § 69.
St.1889, c. 334, § 15.
R.L.1902, c. 13, § 70.
St.1909, c. 490, pt. 2, § 71.

§ 83. Failure to release interest; recording affidavit of notice by collector

If, within thirty days after such notice, such holder of the tax title does not comply therewith, the collector shall cause a copy thereof, with an affidavit by himself or by a disinterested person of the service thereof and of the facts in the case, to be recorded in the registry of deeds. A note of reference to the record of said copy shall be made on the margin of the record of the collector's deed therein referred to; and from the time of such record the interest payable by reason of a breach of warranty in such deed shall cease, and all right and title acquired under such deed shall be held to be released. The collector shall give notice of such proceedings to the town treasurer, who shall, on reasonable demand, pay over out of any funds in his hands the amount due in respect of said deed to the person entitled thereto.

Amended by St.1945, c. 267, § 2.

Historical and Statutory Notes

St.1878, c. 266, § 3.
P.S.1882, c. 12, § 60.
St.1888, c. 390, § 70.
R.L.1902, c. 13, § 71.
St.1909, c. 490, pt. 2, § 72.

§ 84. Reassessment or collection of taxes where title invalid; disclaimer by municipality of title

If the collector has reasonable cause to believe that a tax title, held by a town under a sale or taking for non-payment of a tax, is invalid by reason of any error, omission or informality in the assessment, sale or taking, he may disclaim and release such title by an instrument under his hand and seal, duly recorded in the registry of deeds. If the invalidity of a tax title so disclaimed and released or of a tax title released under section eighty-two or eighty-three was caused by an error, omission or informality in the assessment, the collector shall, upon the recording of such disclaimer and release or after obtaining from the holder of

the deed a release of his interest or after causing a copy of the notice to be filed and recorded as provided in section eighty-three, forthwith notify the board by which the tax or assessment was laid, which shall forthwith reassess it as provided in section seventy-seven of chapter fifty-nine. If such invalidity was caused by an error, omission or informality in the proceedings of the collector, he shall, after the recording of such disclaimer and release, or after obtaining such release or after filing or recording such copy, forthwith collect the unpaid tax or assessment in conformity to law.

Amended by St.1935, c. 260.

Historical and Statutory Notes

St.1878, c. 266, §§ 4, 7.
P.S.1882, c. 12, §§ 61, 62.
St.1888, c. 390, §§ 71, 72.
St.1889, c. 334, § 15.
R.L.1902, c. 13, § 72.
St.1909, c. 490, pt. 2, § 73.

§ 84A. Certificates of invalidity; refunds to tax holders

If a tax title is for any reason adjudged invalid by a court of competent jurisdiction, the clerk, upon request, shall issue a certificate to that effect. The treasurer of the city or town where the land affected by such a tax title is situated, upon receipt of a release by the holder of said title of all the interest which he may have under his tax deed, together with such a certificate, shall refund to such holder the amount paid therefor but not exceeding the amount received by the city or town, with interest at the rate of six per cent per annum for a period of not exceeding two years from the date of the tax deed. The treasurer shall forthwith record said release in the proper registry of deeds, and thereupon, if the said invalidity was caused by an error, omission or informality in the assessment of the tax, the treasurer shall notify the board by which the tax or assessment was laid, which shall forthwith reassess it as provided in section seventy-seven of chapter fifty-nine; and if such invalidity was caused by an error, omission or informality in the proceedings of the collector, the treasurer shall thereupon notify the collector who shall forthwith collect the unpaid tax or assessment in conformity to law.

Amended by St.1933, c. 325, § 16; St.1935, c. 181, § 1.

Historical and Statutory Notes

St.1931, c. 440.

§ 85. Taxes paid by co-tenants; lien on co-tenants' interest

A tenant in common or joint tenant, who pays the entire tax assessed upon land held jointly or in common, shall have a lien upon the interest of each of his co-tenants, to secure the payment to him of the proportion of such tax payable by each of said co-tenants respectively, with the costs of enforcing the same; but any person whose tax has been so paid by his co-tenant shall have the same right to recover it back if illegally assessed as he would have had if the tax had been paid under a protest by him in writing.

Historical and Statutory Notes

St.1875, c. 236, § 1.
P.S.1882, c. 12, § 63.
St.1888, c. 390, § 73.
R.L.1902, c. 13, § 73.
St.1909, c. 490, pt. 2, § 74.

§ 86. Enforcement of lien of co-tenant

Such lien may be enforced in the manner provided in chapter two hundred and fifty-four for enforcing liens on buildings and land under written contracts for the erection, alteration, repair or removal of buildings or structures; but shall be dissolved, unless the person desiring to avail himself thereof, or some one in his behalf, subscribes and makes oath to a certificate setting forth a description, sufficiently accurate for identification, of the property intended to be covered by the lien, the names of the several co-tenants and the interest of each therein, the amount of the tax paid, and the amount due from each co-tenant, and within thirty days after the day of payment of said tax records such certificate in the registry of deeds, and unless a bill in equity to enforce the lien is commenced within sixty days after the date of recording said certificate. Such lien shall have priority over all liens and encumbrances arising after the filing of the certificate required by this section, but shall not be valid against a mortgage actually existing and duly recorded prior to the recording of said certificate, or against any lien existing under section one or section three of chapter two hundred and fifty-four prior to the filing of the certificate. No person except the co-tenant who paid the tax, or a person claiming by, through or under him, shall be made a party plaintiff in a bill brought under this section.

Historical and Statutory Notes

St.1875, c. 236, §§ 2 to 5.
P.S.1882, c. 12, §§ 64, 65.
St.1888, c. 390, §§ 74, 75.
R.L.1902, c. 13, § 74.

St.1909, c. 490, pt. 2, § 75.
St.1918, c. 257, § 57.
St.1919, c. 5.
St.1920, c. 2.

§ 87. Directions to collectors; ordinances or by-laws

A city or town may, by ordinance or by-law, respectively, direct whether its collector shall exercise the power of sale or the power of taking to enforce the lien for taxes; and in default of such ordinance or by-law the collector may exercise either power at his discretion; but the passage of any such ordinance or by-law shall not render invalid any proceedings then pending.

Historical and Statutory Notes

St.1878, c. 266, § 6.
St.1879, c. 169.
P.S.1882, c. 12, § 67.
St.1888, c. 390, § 77.
R.L.1902, c. 13, § 76.
St.1909, c. 490, pt. 2, § 77.

§ 88. Tax lists and warrants; posting by sheriff or deputies

When the tax list and warrant of the assessors is committed to the sheriff or his deputy, he shall forthwith post, in some public place in the town, an attested copy of said list and warrant; and shall make no distress for a tax within thirty days thereafter.

Historical and Statutory Notes

St.1785, c. 70, §§ 3, 4.
R.S.1836, c. 8, § 34.
G.S.1860, c. 12, § 43.
P.S.1882, c. 12, § 68.
St.1888, c. 390, § 78.
R.L.1902, c. 13, § 77.
St.1909, c. 490, pt. 2, § 78.

§ 89. Fees of sheriff for collecting taxes

If a person pays his tax within said thirty days, the officer shall receive from him for his fees five per cent on the sum assessed; but if a tax remains unpaid after said thirty days, he shall collect it by distress or imprisonment, or by sale of land as a collector would do. The officer may also levy his fees for service and travel in the collection of each person's tax, as in other cases of distress and commitment, or sale of land.

Historical and Statutory Notes

St.1785, c. 70, § 4.
R.S.1836, c. 8, § 35.
G.S.1860, c. 12, § 44.
P.S.1882, c. 12, § 69.
St.1888, c. 390, § 79.
R.L.1902, c. 13, § 78.
St.1909, c. 490, pt. 2, § 79.

§ 90. Treasurer as collector; warrants

If a city or town appoints its treasurer as collector of taxes, he may issue his warrants to collect to a deputy collector, returnable in sixty days, requiring him to collect any and all taxes due. Such warrants shall be substantially in the same form and shall confer the same powers as warrants by assessors to collectors.

Amended by St.1980, c. 64, § 8.

Historical and Statutory Notes

St.1817, c. 69.
St.1834, c. 148.
R.S.1836, c. 8, §§ 36, 61.
G.S.1860, c. 12, § 45.
St.1874, c. 28, § 2.
P.S.1882, c. 12, § 70.
St.1888, c. 390, § 80.
R.L.1902, c. 13, § 79.
St.1909, c. 490, pt. 2, § 80.

§ 91. Foreign corporation; non-resident; failure to pay taxes; restraint on business

When any foreign corporation or non-resident person, doing business in the commonwealth, shall for sixty days neglect, refuse or omit to pay a tax lawfully assessed and payable, any court having jurisdiction in equity may on petition of the collector of taxes of the town where the tax is assessed restrain said corporation or person from doing business in the commonwealth until said tax, with all incidental costs and charges, shall have been paid. Service of process upon any such petition may be made by an officer duly qualified to serve process, by leaving a duly attested copy thereof at the place where the business is carried on.

Historical and Statutory Notes

St.1902, c. 349.
St.1909, c. 490, pt. 2, § 81.

§ 92. Deputy collectors; appointment and removal; bookkeeping; reports; deposit and transfer of funds

Any officer authorized to collect taxes may appoint and remove such deputies as such officer deems expedient. Each deputy so appointed shall keep a cash book, in which such deputy shall enter all sums so collected, specifying the total amount of each tax collected, all interest, charges and fees received, the name and address of each party from whom money was received and the date of each such receipt. They shall prepare a report to the collector of all uncollected warrants issued to the

deputy at least once a month. Such deputies shall give bond for the faithful performance of their duties, in such sum and in such form, and subject to such conditions, as the commissioner may prescribe, and shall have all the powers of collectors. Any such deputy shall, at least weekly, either turn over sums collected to the collector, or deposit said funds into an account which is separate from any other account of that community, or any other community, for the purpose of clearing checks and earning interest on deposits. The deputy shall have no authority to withdraw amounts from this deputy deposit account except the deputy's fees due under section fifteen. The collector shall transfer funds which have cleared from such account to the town treasury at least once a week along with any interest earned and may retain any fees of the collector and deputy and pay over such fees to the collector or deputy, unless such fees belong to the municipality.

Amended by St.1933, c. 82, § 1; St.1934, c. 259, § 1; St.1989, c. 729, § 3.

Historical and Statutory Notes

St.1874, c. 28, § 1.
P.S.1882, c. 12, § 71.
St.1888, c. 390, § 81.
R.L.1902, c. 13, § 80.
St.1908, c. 247.
St.1909, c. 490, pt. 2, § 82.

§ 93. Money due taxpayer from municipalities; withholding for delinquent taxes

The treasurer or other disbursing officer of any town may, and if so requested by the collector shall, withhold payment of any money payable to any person from whom there are then due taxes, assessments, rates or other charges committed to such collector, which are wholly or partly unpaid, whether or not secured by a tax title held by the town, to an amount not exceeding the total of the unpaid taxes, assessments, rates and other charges, with interest and costs. The sum withheld shall be paid or credited to the collector, who shall, if required, give a written receipt therefor. The person taxed or charged may in such case have the same remedy as if he had paid such taxes, assessments, rates or other charges after a levy upon his goods. The collector's rights under this section shall not be affected by any assignment or trustee process or attorney's lien.

Amended by St.1943, c. 199; St.1945, c. 397, § 2.

Historical and Statutory Notes

St.1878, c. 266, § 8.
P.S.1882, c. 12, § 72.
St.1888, c. 390, § 82.
R.L.1902, c. 13, § 81.
St.1909, c. 490, pt. 2, § 83.

§ 94. Accounts and receipts of collectors; exhibiting on request of municipal officers

The aldermen or selectmen may require the collector once in two months to exhibit to them a true account of all money received on the taxes committed to him, and to produce the treasurer's receipts for all money paid into the treasury by him.

Historical and Statutory Notes

St.1783, c. 66, § 1.
R.S.1836, c. 8, § 45.
G.S.1860, c. 12, § 46.
P.S.1882, c. 12, § 73.
St.1888, c. 390, § 83.
R.L.1902, c. 13, § 82.
St.1909, c. 490, pt. 2, § 84.

§ 95. Credits and payments to collectors

The collector shall be credited with all sums abated; with all sums committed and thereafter apportioned under section thirteen of chapter eighty; with the amount of all assessments not apportioned to subsequent years which have been committed under section four of chapter eighty and subsequently recommitted to him to be added to the annual tax on the land; with the amount of taxes for which a judgment has been rendered by any court in favor of the city or town; with the amount of a claim for taxes allowed in favor of the city or town in bankruptcy or receivership cases; with the amount of taxes assessed upon any person committed to jail for non-payment of his tax within two years from the receipt of the tax list by the collector, and who has not paid his tax; with any sums which the town may see fit to abate to him, due from persons committed after the expiration of two years; with all sums withheld by the treasurer of a town under section ninety-three; subject to the provisions of sections forty-eight and fifty-five, with the amount of the taxes and costs, charges and fees where land has been purchased or taken by the town for non-payment of taxes; and upon certification in accordance with section sixty-one, with the amount of subsequent taxes which have become part of the terms of redemption in any tax title held by the town. When a collector is credited with the amount of taxes assessed upon any person committed to jail for the non-payment of his tax, who has not paid his tax, said collector shall also be paid and credited with the fees and charges which have become a part of said taxes and to which he or the

officer acting under his warrant is entitled. A collector shall be discharged from liability upon his bond for failure to collect taxes committed to him for collection to the extent that the commissioner shall certify that such taxes are presently uncollectible because of judicial order or decree or because of the financial embarrassment of a public service corporation or because of similar reason and that such taxes are outstanding without fault of such collector; provided, that for the faithful performance of his duty to collect such taxes such collector shall forthwith give a separate bond in such form and sum as the commissioner may prescribe or approve.

Amended by St.1933, c. 325, § 17; St.1934, c. 315, § 2; St.1935, c. 248, § 3; St.1939, c. 451, § 23; St.1941, c. 380, § 6; St.1943, c. 107; St.1949, c. 202.

Historical and Statutory Notes

St.1785, c. 42, § 6.
R.S.1836, c. 8, § 43.
G.S.1860, c. 12, § 48.
St.1862, c. 183, § 5.
P.S.1882, c. 12, § 75.
St.1888, c. 390, § 85.
R.L.1902, c. 13, § 83.
St.1908, c. 99, § 2.
St.1909, c. 490, pt. 2, § 85.

§ 96. Removal of collectors

If a collector becomes incapacitated by reason of mental illness, absconds or removes from the town or in the judgment of the aldermen or selectmen is about to so remove or is otherwise unable to discharge his duty, or if he refuses on demand to exhibit to the aldermen or selectmen his books, vouchers and accounts of collections as provided in this chapter, the aldermen or selectmen may remove him from office.

Amended by St.1987, c. 522, § 2.

Historical and Statutory Notes

St.1783, c. 10, § 1.
St.1785, c. 46, § 15.
St.1791, c. 22, § 1.
R.S.1836, c. 8, § 40.
G.S.1860, c. 12, § 52.
P.S.1882, c. 12, § 79.
St.1888, c. 390, § 89.
R.L.1902, c. 13, § 84.
St.1909, c. 490, pt. 2, § 86.

§ 97. Accounts, records, etc., of collectors; audits; deposit with assessors; uncollected tax lists

If a collector ceases to hold the office of collector for any reason, all his accounts, records and papers, including his warrant, which relate to the assessment and collection of taxes in his town shall, forthwith after an audit thereof has been made by a competent accountant, be deposited by him, or his executor or administrator, or any other person into whose possession they may come, with the assessors of such town, who thereupon shall turn over his uncollected tax lists to his successor, together with their warrant, which shall cover the uncollected accounts of the original commitment as shown on said lists and shall also turn over all his accounts, records and papers, including his warrant, so deposited with them, except said lists, to the clerk of said town. If the collector is his own successor, he shall complete the collection of the taxes as a part of the duties of his new term of office and not as a part of the duties of his former term of office.

Amended by St.1934, c. 151, § 1.

Historical and Statutory Notes

St.1785, c. 46, § 5.
St.1785, c. 70, § 1.
R.S.1836, c. 8, § 39.
G.S.1860, c. 12, § 53.
St.1881, c. 138, § 1.
P.S.1882, c. 12, §§ 80, 81.
St.1888, c. 390, §§ 90, 91.
R.L.1902, c. 13, § 85.
St.1909, c. 490, pt. 2, § 87.
St.1919, c. 41.
St.1923, c. 128, § 5.

§ 98. Back taxes; actions to recover

No action to recover back a tax shall be maintained, except as provided in sections sixty and eighty-five, unless commenced within three months after payment of the tax nor unless such tax is paid either after an arrest of the person paying it, a levy on his goods, a notice of a sale of his land, a written protest signed by him, or a withholding of money due him under section ninety-three. In an action founded on an error or irregularity in the assessment or apportionment of a tax, only the amount in excess of the tax for which the plaintiff was liable shall be recoverable; and no sale, contract or levy shall be avoided solely by reason of such error or irregularity.

Historical and Statutory Notes

St.1859, c. 118, §§ 3, 4.
G.S.1860, c. 12, § 56.
P.S.1882, c. 12, § 84.
St.1888, c. 390, § 94.
R.L.1902, c. 13, § 86.
St.1909, c. 490, pt. 2, § 88.

§ 99. Collectors; failure to exhibit accounts or receipts

A collector who neglects or refuses to exhibit accounts or to produce receipts, as required under

section ninety-four, shall forfeit to the town two and one half per cent of the sums committed to him for collection.

Historical and Statutory Notes

St.1783, c. 66, § 2.
R.S.1836, c. 8, § 46.
G.S.1860, c. 12, § 47.
P.S.1882, c. 12, § 74.
St.1888, c. 390, § 84.
R.L.1902, c. 13, § 82.
St.1909, c. 490, pt. 2, § 84.

§ 100. Collectors; failure to turn over accounts

Violation by a collector, former collector, or an executor or administrator of a collector or former collector, of any provision of section nine[1], twelve or ninety-seven shall be punished by a fine of not more than five hundred dollars.

1 Repealed.

Historical and Statutory Notes

St.1892, c. 370, § 7.
R.L.1902, c. 13, § 11.
St.1909, c. 490, pt. 2, § 11.
St.1923, c. 128, § 6.

§ 101. Violations of Sec. 12

Violation of section twelve by a person of whom demand is made thereunder shall be punished by a fine of not more than five hundred dollars.

Historical and Statutory Notes

St.1892, c. 370, § 7.
R.L.1902, c. 13, § 11.
St.1909, c. 490, pt. 2, § 11.

§ 102. Collectors; violations of Sec. 2 or Sec. 8

Violation by a collector of section two or section eight shall be punished by a fine of not less than three hundred dollars.

Historical and Statutory Notes

St.1897, c. 126, § 3.
R.L.1902, c. 13, § 12.
St.1909, c. 490, pt. 2, § 12.
St.1918, c. 257, § 44.
St.1919, c. 5.
St.1920, c. 2.

§ 103. Failure to aid collector

Whoever refuses or neglects to aid a collector when required under section thirty-three shall forfeit not more than ten dollars.

Historical and Statutory Notes

St.1782, c. 61, § 2.
St.1785, c. 70, § 9.
R.S.1836, c. 8, § 6.
G.S.1860, c. 12, § 17.
P.S.1882, c. 12, § 18.
St.1888, c. 390, § 22.
R.L.1902, c. 13, § 30.
St.1909, c. 490, pt. 2, § 31.

§ 104. Exorbitant redemption charges

Violation by any person of the last sentence of the second paragraph of section sixty-two shall be punished by a fine of not more than one hundred dollars.

Amended by St.1937, c. 43.

Historical and Statutory Notes

St.1891, c. 288.
R.L.1902, c. 13, § 59.
St.1909, c. 490, pt. 2, § 60.
St.1931, c. 426, § 66.

§ 105. Forms

Forms to be used in proceedings for the collection of taxes under this chapter and chapter fifty-nine and of all assessments which the collector is authorized or required by law to collect shall be as prescribed or approved by the commissioner.

Amended by St.1932, c. 54, § 1; St.1933, c. 168, § 3; St.1941, c. 258, § 4.

Historical and Statutory Notes

St.1888, c. 390, § 96.
St.1889, c. 334, § 16.
R.L.1902, c. 13, § 87.
St.1909, c. 490, pt. 2, § 89.
St.1913, c. 311.
St.1915, c. 237, §§ 22, 26.
St.1916, c. 103.
St.1918, c. 190, § 1.
St.1918, c. 257, §§ 45, 48, 53, 54, 58.
St.1919, c. 5.
St.1920, c. 2; c. 460.
St.1923, c. 377, § 8.

§ 106. Repealed, 1985, 598, Sec. 2

CHAPTER 60A

EXCISE TAX ON REGISTERED MOTOR VEHICLES IN LIEU OF LOCAL TAX

Section

1. Excise tax on motor vehicles; assessment and levy; exemptions; abatement for theft of motor vehicle.
1A. Repealed.
2. Collection of tax; abatement.
2A. Nonpayment of taxes; collection; nonrenewal of driver's license and vehicle registration.
3. Remedies of collectors.
4. Laws respecting registration of motor vehicles; effect of this chapter.
5. Repealed.
6. Where excise laid and collected.
7. Uncollectible tax; abatement.
8. Unpaid tax; abatement.
9. Deferral of excise due by Massachusetts National Guard members and reservists on active duty and dependents.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Excise tax on motor vehicles; assessment and levy; exemptions; abatement for theft of motor vehicle

Except as hereinafter provided, there shall be assessed and levied in each calendar year on every motor vehicle and trailer registered under chapter ninety, for the privilege of such registration, an excise measured by the value thereof, as hereinafter defined and determined, at the rate of twenty-five dollars per thousand of valuation. For the purpose of this excise the value of each such motor vehicle or trailer shall be deemed to be the value, as determined by the commissioner, of motor vehicles or trailers of the same make, type, model, and year of manufacture as designated by the manufacturer, but not in excess of the following percentages of the list price established by the manufacturer for the year of manufacture, namely:—

In the year preceding the designated year of manufacture	50%
In the year of manufacture	90%
In the second year	60%
In the third year	40%
In the fourth year	25%
In the fifth and succeeding years	10%

A motor vehicle dealer to whom a general distinguishing number or mark has been issued shall, for the privilege of such registration, pay to the collector of taxes for the city or town in which such dealership is licensed, a special excise in the amount of $100.00 for each registration plate issued by the registrar of motor vehicles under such general distinguishing number or mark. Such motor vehicle dealer shall otherwise be exempt from the excise imposed by this section on any motor vehicle owned by such motor vehicle dealer, which motor vehicle may be operated by such dealer, the spouse of such dealer, a co-owner of such dealer or dealership entity, the spouse of such co-owner or an employee of such dealer whose duties involve the sale of motor vehicles at any time for any purpose, including personal use, provided that such employee renders at least 20 hours of service each week to such dealer and provided that such co-owner holds at least 40 per cent proprietary interest in such motor vehicle dealer or any such dealership entity; provided, however, that a motor vehicle which is operated under such general or distinguishing mark or number shall, at all times, display all notices and stickers required by applicable law to be eligible for sale.

The term "year of manufacture", as used in this section, shall mean the year used by the manufacturer of the motor vehicle or trailer in connection with the designation by him or it of the model of such motor vehicle or trailer.

Nothing in this section shall be construed to prevent the board of assessors or the commissioner of revenue, as the case may be, from granting an abatement in any case in which the valuation aforesaid is in their or his opinion excessive.

The excise imposed by this section shall not apply to motor vehicles or trailers owned and registered by the commonwealth or any political subdivision thereof, or to motor vehicles or trailers owned and registered by a corporation whose personal property is exempt from taxation under clauses Third and Tenth of section five of chapter fifty-nine. Motor vehicles or trailers owned or controlled by a manufacturer, or farmer to whom has been issued a general distinguishing number or mark under section five of chapter ninety, and trailers owned or controlled by a dealer to whom there has been issued a general distinguishing number or mark, shall be exempt from the excise imposed by this section, upon application in writ-

ing filed with the assessors, if and so long as such motor vehicle or trailer is operated or propelled over the highways solely in connection with the business of the owner or controller as such manufacturer or farmer and in no way for his personal use or convenience or the personal use and convenience of his family or any other person; provided, that such application shall contain a statement subscribed under penalties of perjury by such owner or controller to the effect that such motor vehicle or trailer is and will be operated or propelled only in the manner aforesaid; and provided further that if any such motor vehicle or trailer is operated or propelled otherwise than in the manner aforesaid, there shall be assessed and levied on such motor vehicle or trailer the excise imposed by this chapter, and a penalty of one hundred dollars, which excise and penalty shall be assessed by the assessors and collected by the collectors of taxes, nor shall such excise be abated by reason of any subsequent transfer of such motor vehicle or trailer. If no application for exemption is filed with the assessors as aforesaid, any motor vehicle or trailer owned or controlled by a manufacturer and operated or propelled under a general distinguishing number or mark issued to such manufacturer shall be subject to the excise imposed by this chapter, which excise shall be assessed by the assessors and collected by the collectors of taxes.

The excise imposed by this section shall not apply to motor vehicles leased for a full calendar year to a charitable organization when such vehicle is owned and registered by a lessor engaged in the business of leasing motor vehicles. In any city or town which accepts the provisions of this sentence, by a vote of the city council with the approval of the mayor, in a town, by a vote of the town meeting, and in a municipality having a town council form of government, by a vote of the town council. The excise tax imposed by this section shall not apply to a motor vehicle owned and registered by a former prisoner of war defined as any regularly appointed, enrolled, enlisted, or inducted member of the military forces of the United States who was captured, separated and incarcerated by an enemy of the United States during an armed conflict; provided, however, that the excise tax shall not apply to a motor vehicle owned and registered by the surviving spouse of a deceased former prisoner of war, until such time as the surviving spouse remarries or fails to renew such registration. As used herein, the term "charitable organization" means an organization, other than a degree granting or diploma awarding educational institution, whose personal property is exempt from taxation under clause Third of section five of chapter fifty-nine.

The excise imposed by this section shall not apply to a motor vehicle owned and registered by a veteran, as defined in section 7 of chapter 4, who according to the records of the United States Veterans Administration, by reason of service in the armed forces of the United States, has suffered loss, or permanent loss of use of, one or both feet, or loss, or permanent loss of use of, one or both hands, or has been determined by the medical advisory board established under section 8C of chapter 90 to be permanently disabled; nor to a motor vehicle owned and registered by a veteran, as defined in section 7 of chapter 4, who is receiving a statutory award from the Veterans Administration for the loss of sight of one eye or who according to the records of the United States Veterans Administration, by reason of service in the armed forces of the United States, has suffered permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than twenty degrees in the better eye; nor to a motor vehicle owned and registered to any person who has suffered loss, or permanent loss of use of, both legs or both arms; nor to a motor vehicle owned and registered to any person who has suffered permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than twenty degrees in the better eye. This exemption shall apply to not more than one motor vehicle owned and registered for the personal, noncommercial use of such veteran or person. After the assessors have allowed an exemption under this paragraph no further evidence of the existence of the facts required by this paragraph shall be required in any subsequent year in the city or town in which the exemption has been so allowed; provided, however, that the assessors may refuse to allow an exemption in any subsequent year if they become aware that the

veteran or person did not satisfy all of the requisites of this section at the time the exemption was first granted.

In any city or town accepting the provisions of this paragraph, the excise imposed by this chapter shall not apply to a motor vehicle owned and registered by a resident who is in active and full-time military service as a member in the armed forces of the United States or the national guard, army or air, of any state, and has been deployed or stationed outside the territorial boundaries of the continental United States for a period of at least 45 days in the calendar year of the exemption. If the military member is wounded or killed in an armed conflict, he shall not be subject to the foregoing period of service qualification for the calendar year in which he is wounded or killed. This exemption shall apply only to a motor vehicle owned and registered by a military member in his own name or jointly with a spouse for a non-commercial purpose and a military member may qualify for this exemption for only 1 motor vehicle for each calendar year. A municipality which accepts the provisions of this paragraph shall, in connection with the issuance of warrant to collect unpaid motor vehicle or trailer excise tax from a delinquent taxpayer, add $3 to the fee prescribed in clause 9 of section 15 of chapter 60. The acceptance by a municipality of this paragraph shall take effect on the first day of January next occurring after the approval by the municipality to accept this paragraph.

A person who qualifies for any calendar year for exemption from the excise imposed by this section on a motor vehicle owned and registered by him shall be entitled to the exemption upon application to the assessors for that year as provided in section 2 for the procedure of an owner aggrieved by the excise assessed. An application for exemption may be made by such person; his spouse, if the motor vehicle is jointly owned and registered in the names of the person and spouse; or, if the person is deceased, a surviving spouse, administrator, executor or trustee of the estate, will or trust, as the case may be.

If a motor vehicle or trailer is originally registered after January thirty-first in any year, the excise under this section shall be that proportion of the excise for the full year which the number of months in said year following the month preceding that in which the motor vehicle or trailer is registered bears to twelve; but no excise shall be assessed on the same motor vehicle or trailer more than once in any calendar year by reason of the renewal of the registration of such vehicle within the calendar year, unless its ownership is transferred by sale or otherwise and its registration surrendered or it is registered after a surrender or expiration of registration upon removal of its owner to another state and registration in such other state. If during any calendar year ownership of a motor vehicle or trailer subject to an excise under this section is transferred by sale or otherwise and the registration of such motor vehicle or trailer is surrendered, or if during any calendar year the owner of a motor vehicle or trailer subject to such an excise removes to another state and registers such motor vehicle or trailer in such other state and surrenders or does not renew his registration in this state, the excise under this section shall be reduced upon application by an abatement equal to that proportion of an excise under this section on such motor vehicle or trailer for the full calendar year which the number of months in said year remaining after the month in which such transfer by sale or otherwise or such surrender or expiration of registration occurs bears to twelve; provided, however, that if in the month in which such transfer by sale or otherwise occurs, the person making such transfer registers another motor vehicle or trailer under chapter ninety and thereby becomes subject to an excise under this section on such other motor vehicle or trailer for such month, the excise under this section on the motor vehicle or trailer transferred shall be further reduced upon application as aforesaid by an abatement equal to one twelfth of a full calendar year's excise under this section on the motor vehicle or trailer transferred. If before an excise imposed under this section is assessed, notice of transfer by sale or otherwise and surrender of registration or of surrender or expiration of registration as aforesaid is received by the official or officials authorized to make the assessment, the excise shall be assessed in the amount to which it would be reduced by abatement as aforesaid. The excise imposed by this section shall in no event be less than five dollars; no abatement under this section shall reduce any such excise to less than five dollars; no abatement shall be granted in an amount less than five dollars; and no refund shall be paid in an amount less than five dollars.

The excise imposed by this section shall not apply to the registration by an inhabitant of any state other than this commonwealth or by a partnership, voluntary association or corporation

which does not have a principal place of business in this commonwealth, of any motor vehicle or trailer to be customarily kept in another state; provided, such motor vehicle or trailer is also registered in such other state during the period when registered in this commonwealth, and if such other state does not impose an excise, privilege or property tax or fee in lieu of or in addition to a registration fee, or does not impose a registration fee at a rate greater than that required for registration in this commonwealth, upon motor vehicles or trailers, as the case may be, customarily kept in this commonwealth and registered by an inhabitant of this commonwealth, or by a partnership, voluntary association or corporation having its principal place of business in this commonwealth. The commissioner shall determine what states do not impose such additional excise, privilege or property tax or fee, or registration fee or fee in lieu of such levies and his determination shall be final.

If a motor vehicle or trailer is stolen, the owner of such motor vehicle or trailer may apply for an abatement of excise, provided:

(1) The owner of the stolen vehicle or trailer has notified the local police authorities of the theft within forty-eight hours of discovery of the theft.

(2) The owner of the stolen motor vehicle or trailer has surrendered the certificate of registration of the stolen motor vehicle or trailer and has obtained a certificate, setting forth the facts, and signed by the registrar of motor vehicles or his authorized agent. Such surrender shall not be made sooner than thirty days subsequent to the date of the theft.

The excise may then be reduced by an abatement equal to that proportion of an excise under this section on such motor vehicle or trailer for the full calendar year which the number of months in said year remaining after the month in which such surrender of the certificate of registration occurs bears to twelve; provided, however, that should the motor vehicle or trailer be subsequently recovered and registered in the same calendar year by the same owner an additional excise which shall be that proportion of the excise for the full year which the number of months in said year following the month preceding that in which the motor vehicle or trailer is registered bears to twelve, shall be paid, notwithstanding any provisions of this section to the contrary. The commissioner or the assessors, as the case may be, may require that the owner of the stolen motor vehicle or trailer exhibit the certificate of surrender of registration and provide them with a written statement from the local police authorities certifying that such authorities were notified of the theft and that the stolen motor vehicle or trailer has not been recovered.

Whoever falsely reports the theft of a motor vehicle or trailer for the purposes of securing an abatement of excise shall forfeit a sum not larger than three times the excise due on the vehicle for the entire year, such sum to be recovered in a civil action brought by the city or town to which the excise was payable.

Amended by St.1936, c. 384, §§ 1, 2; St.1938, c. 111; St.1938, c. 480, § 1; St.1941, c. 718, § 1; St.1947, c. 644; St.1949, c. 342; St.1949, c. 401; St.1950, c. 666, § 1; St.1950, c. 731; St.1951, c. 165; St.1951, c. 736, § 4; St.1952, c. 412; St.1953, c. 388; St.1953, c. 653; St.1953, c. 654, § 38; St.1954, c. 548; St.1954, c. 640, § 1; St.1955, c. 320; St.1955, c. 403, § 4; St.1955, c. 587, § 1; St.1956, c. 328, § 1; St.1957, c. 174; St.1959, c. 273, § 1; St.1960, c. 758, § 1; St.1962, c. 644, § 1; St.1965, c. 622, § 1; St.1966, c. 140; St.1967, c. 117; St.1968, c. 503; St.1972, c. 121; St.1974, c. 242, § 1; St.1977, c. 293; St.1978, c. 467; St.1978, c. 514, § 87; St.1980, c. 580, § 9; St.1982, c. 597, § 1; St.1984, c. 33, § 1; St.1985, c. 35, § 1; St.1988, c. 43, §§ 7 to 9; St.1989, c. 341, §§ 43, 44; St.1989, c. 653, §§ 42 to 45; St.1990, c. 336, § 1; St.1998, c. 194, §§ 116 to 119; St.2003, c. 46, § 71, eff. July 31, 2003; St.2006, c. 260, §§ 13, 14, eff. Jan. 1, 2007; St.2008, c. 182, § 16, eff. Jan. 1, 2010.

Historical and Statutory Notes

St.1928, c. 379, § 1.
St.1930, c. 220, § 13.
St.1930, c. 244, § 1.

§ 1A. Repealed, 1955, 587, Sec. 2

§ 2. Collection of tax; abatement

Except as otherwise provided in section one, if the owner of the motor vehicle or trailer registered is an individual inhabitant of the commonwealth, or a partnership, voluntary association or corporation having a principal place of business in the commonwealth or if the owner of the motor vehicle or trailer registered is not such an individual, partnership, voluntary association or corporation but the vehicle or trailer is customarily kept in any particular municipality in the commonwealth, the board of assessors shall assess the excise imposed by section one, and commit the same to the collector of taxes with their warrant for the collection thereof. Otherwise the excise so imposed shall be assessed and collected by the commissioner. The excise shall be assessed to the owner of the motor vehicle or trailer registering the same, and the

registrar of motor vehicles shall promptly transmit to the commissioner a notice of the registration of a motor vehicle or trailer subject to this excise, giving the name and residential address of the owner, if an individual, or the name and principal place of business in this commonwealth, if any, otherwise that outside the commonwealth, if a corporation, partnership or voluntary association, the municipality in which the motor vehicle or trailer is customarily to be kept if it is to be kept in the commonwealth, the name of the maker, the year of manufacture as designated by the manufacturer, the model and type of vehicle or trailer, the type of transmission and the operator's license number of the owner of the vehicle, if any. The commissioner may require from the owner such further information as may be necessary for the purposes of this chapter. If an application for the registration of a motor vehicle or trailer contains a statement that the motor vehicle or trailer is customarily to be kept in any particular district, section or part of a city or town, the commissioner shall determine in what city or town said district, section or part is located, and shall transmit the information to the assessors. The commissioner shall, within eight months of the receipt of such information, transmit to the boards of assessors the information received relative to registration with respect to motor vehicles and trailers locally assessable sent to him by the registrar of motor vehicles, and, under such provisions as he deems best, make available to the local assessors information showing the values as determined under section one. All tax notices sent to owners of vehicles notifying said owners of the amount of excise tax due and the due date shall indicate the owner's license to operate number as appearing on the registration application, renewal application or amended registration as provided in section two of chapter ninety. The excise hereunder shall be due and payable at the expiration of thirty days from the date upon which the notice was issued by the collector or the commissioner pursuant to this section and the due date shall be clearly indicated on the tax notice. The collector of taxes or the commissioner, as the case may be, shall seasonably notify the owner of the excise assessed and the due date, but failure to receive notice shall not affect the validity of the excise. The owner, if aggrieved by the excise assessed, may at any time within 3 years after the date the excise was due or 1 year after the date the excise was paid, whichever is later, apply for an abatement to the board of assessors, and from a decision of the board of assessors upon such application, an appeal may be taken to the county commissioners or to the appellate tax board, all in accordance with section 64 or 65 of chapter 59. If an abatement of an excise assessed by a board of assessors is ordered by a decision of the county commissioners or the appellate tax board, any overpayment with interest thereon at the rate of six per cent per annum from the date of payment shall be refunded by the city or town treasurer from any available funds, upon certificate by the collector of taxes and approval for payment as required by section fifty-two of chapter forty-one, without any appropriations therefor by the municipality. Owners who neglect to pay the excise assessed under this chapter shall pay interest at the rate of twelve per cent per annum from the time when such excise was payable until paid. The notice issued pursuant to this section shall bear on its face a statement of the time within which petitions for abatement of the excise may be filed.

The provisions of chapter sixty-two C shall apply to the excises assessed by the commissioner.

Amended by St.1936, c. 384, § 3; St.1938, c. 480, § 2; St.1939, c. 366, § 4; St.1950, c. 666, § 2; St.1952, c. 400; St.1953, c. 654, § 39; St.1954, c. 373, § 1; St.1954, c. 640, § 2; St.1957, c. 375; St.1959, c. 371, § 1; St.1962, c. 231, § 2; St.1970, c. 142; St.1974, c. 211; St.1976, c. 415, § 4; St.1978, c. 152; St.1980, c. 406, § 2; St.1981, c. 170; St.1982, c. 117, §§ 1, 2; St.1984, c. 33, § 2; St.1985, c. 534; St.1989, c. 341, § 45; St.1992, c. 286, § 134; St.2004, c. 262, § 10, eff. Aug. 9, 2004; St.2010, c. 188, § 55, eff. July 27, 2010.

Historical and Statutory Notes

St.1928, c. 379, § 1.
St.1930, c. 244, § 2.
St.1930, c. 416, § 15.

§ 2A. Nonpayment of taxes; collection; nonrenewal of driver's license and vehicle registration

If an excise assessed under this chapter remains unpaid for fourteen days after a demand therefor made more than one day after such excise becomes due and payable, and if the local tax collector or commissioner of revenue elects to utilize the services of a deputy collector, then said deputy collector or the local tax collector or commissioner of revenue, as the case may be, shall send a notice of warrant to the delinquent taxpayer. In the event that the delinquent taxpayer does not respond within thirty days to said notice of warrant then a service warrant shall be made. If the tax remains unpaid after the service of warrant then the deputy collector may, at the discretion of the local collector, return the uncollected warrants of those delin-

quent taxpayers to the local tax collector or commissioner of revenue. The local tax collector, the commissioner of revenue, or their designee, as the case may be, may at any time and from time to time not later than six years after the initial excise tax issuance was made, transmit to the registrar of motor vehicles, hereinafter in this section called the registrar, in such form as approved by the registrar and by the joint committee on taxation, notice of such nonpayment, specifying the name and address of the person to whom the excise is assessed, the amount of the excise due and all interest thereon and costs relative thereto and such information as to the motor vehicle or trailer assessed as was transmitted by the registrar to the commissioner of revenue under section two; provided, however, that no notice shall be transmitted to the registrar under this section at a time when there is pending before the local board of assessors or the appellate tax board, as the case may be, a duly filed application for the abatement of such excise in whole or in part nor within thirty days after action upon any such application by the local board of assessors or the appellate tax board, as the case may be.

Upon receipt of such notification of nonpayment the registrar shall place the matter on record and not renew the license to operate a motor vehicle of the registered owner of said vehicle or the registration of said vehicle nor allow an exchange of the registration of such vehicle nor issue a new registration of such vehicle to the person to whom the unpaid excise tax was assessed until after notice from the local tax collector or the commissioner of revenue that the matter has been disposed of in accordance with law.

Upon such notification of nonpayment to the registrar, an additional twenty dollar charge payable to the registrar of motor vehicles shall be assessed against the registered owner of said vehicle. It shall be the duty of the local tax collector or commissioner of revenue to notify the registrar forthwith that such matters have been disposed of in accordance with law; provided however, that a certified receipt of full and final payment from either the local tax collector or commissioner of revenue shall also serve as a legal notice to the registrar that the matter has been so disposed of.

Except as heretofore provided, the registrar shall approve such forms as he deems necessary to implement this section and said forms shall be printed and used by the cities and towns.

On or before September first of each year, the registrar of motor vehicles shall certify for each city and town in the commonwealth the total number of charges to be assessed pursuant to this section based upon the number of notices received by the registrar that have been disposed of in accordance with law. The registrar shall include such assessments in the warrants prepared in accordance with section twenty of chapter fifty-nine.

Added by St.1938, c. 492, § 1. Amended by St.1943, c. 18; St.1945, c. 443; St.1953, c. 339, § 1; St.1958, c. 91; St.1969, c. 183; St.1970, c. 250; St.1973, c. 139; St.1976, c. 398, § 1; St.1977, c. 737, § 2; St.1978, c. 183; St.1978, c. 514, § 88; St.1980, c. 572, § 15; St.1989, c. 653, § 46; St.1990, c. 150, § 270; St.1992, c. 133, § 388; St.1993, c. 151, § 29; St.1996, c. 492.

§ 3. Remedies of collectors

In the collection of this excise, the collectors of taxes shall have all the remedies provided by chapter sixty.

Amended by St.1936, c. 384, § 4; St.1938, c. 480, § 3; St.1976, c. 415, § 5.

Historical and Statutory Notes

St.1928, c. 379, § 1.

§ 4. Laws respecting registration of motor vehicles; effect of this chapter

The provisions of this chapter, other than those contained in section two A thereof, shall not be construed to alter or amend the provisions of law with respect to the registration of motor vehicles or trailers.

Amended by St.1938, c. 480, § 4; St.1938, c. 492, § 2.

Historical and Statutory Notes

St.1928, c. 379, § 1.

§ 5. Repealed, 1953, 654, Sec. 40

§ 6. Where excise laid and collected

The excise locally assessable under this chapter shall be laid and collected at the residential address of the owner, if an individual, or at the principal place of business in this commonwealth, if a partnership, voluntary association or corporation, as determined by the owner's registration, except that if a motor vehicle or trailer is customarily kept in some other municipality, the excise shall be laid and collected in such other municipality.

Amended by St.1936, c. 384, § 5; St.1938, c. 480, § 5.

Historical and Statutory Notes

St.1928, c. 379, § 1.

§ 7. Uncollectible tax; abatement

If a collector is satisfied that an excise that has been committed to him or to any of his predecessors in office for collection, is uncollectible by reason of the death, absence, poverty, insolvency, bankruptcy, or other inability of the person assessed to pay, he shall notify the assessors thereof in writing on oath, stating why such excise cannot be collected. The assessors shall act upon such notification within thirty days, and, after due inquiry, may abate such excise or any part thereof, and shall certify such abatement in writing to the collector, and said certificate shall discharge the collector from further obligation to collect the excise so abated.

Added by St.1988, c. 43, § 10.

§ 8. Unpaid tax; abatement

Notwithstanding the failure of the owner of a motor vehicle on which an excise was assessed under this chapter to apply for an abatement within the time set forth in section 2, the board of assessors may abate the whole, or any part of any such excise, or any interest thereon or costs relative thereto, that remains unpaid where, in the assessors' opinion it should be abated. No such abatements shall be granted unless they are in accordance with such rules, regulations and guidelines as the commissioner of revenue may prescribe and no interest shall be due in connection with any such abatement. Whenever an abatement is granted under this section, the assessors shall enter the same in their record of abatements. The assessors shall annually, not later than August 1, report to the commissioner, in the form and manner prescribed by him, the abatements granted during the prior fiscal year.

Added by St.2004, c. 262, § 11, eff. Aug. 9, 2004.

§ 9. Deferral of excise due by Massachusetts National Guard members and reservists on active duty and dependents

In any city or town accepting the provisions of this section and notwithstanding any other provision of this chapter to the contrary, any excise due under this chapter by a member of the Massachusetts National Guard or reservist or a dependent of a member of the Massachusetts National Guard or reservist shall be deferred while that member is on active service outside the commonwealth and for a period of up to 180 days after completion of that service. No interest or penalties shall be assessed for any period before the expiration of the 180 days.

Added by St.2008, c. 182, § 17, eff. July 1, 2008.

CHAPTER 60B

EXCISE ON BOATS, SHIPS AND VESSELS IN LIEU OF LOCAL PROPERTY TAX

Chapter 60B of the General Laws was added by St.1978, c. 581, § 5.

Section
1. Definitions.
2. Excise taxes.
3. Exemptions.
4. Collector of taxes; penalties.
5. Collection provisions.
6. Ship and vessel information.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Definitions

As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Vessel", every watercraft, including documented boats and ships, used or capable of being used as a means of transportation on water, and includes all equipment, including mode of power, and furnishings that are normally required aboard the vessel during accomplishment of the functions for which the vessel is being utilized.

"Habitually moored or docked", the place where the owner has usual mooring or dockage for the summer season.

"Principally situated", for a registered ship or vessel where it is registered, and for a non registered ship or vessel, whether documented or not, the city or town in Massachusetts where it is principally located during the calendar year.

Added by St.1978, c. 581, § 5.

§ 2. Excise taxes

(a) Except as hereinafter provided there shall be assessed and levied by each city and town in each fiscal year on every vessel, and its equipment, for the privilege of using the waterways of the commonwealth, an excise measured by the value thereof, as hereinafter defined and determined, at the rate of ten dollars per thousand of valuation.

(b) Any person who owns such a vessel on July first shall annually, on or before August first, make a return on oath to the assessors of the city or town where such vessel is habitually moored or docked, or in the case of a vessel which has no mooring or docking space, where said vessel is principally situated, setting forth the vessel's registration or documentation number, if any; an adequate description, as well as the owner's estimate of the fair cash value of said vessel and any engine or motor used to propel said vessel, as of the next preceding July first; and the place of habitual mooring or docking or other principal location of said vessel.

(c) For the purpose of computing the excise under this chapter the value of each such vessel, and its equipment, shall be deemed to be the fair cash value as determined by the assessors of each city and town, but not in excess of the following values:

LENGTH OF VESSEL (Overall center line Length excluding bowsprits, boomkins and similar extensions)	VALUATIONS OF VESSELS (based on age of vessel)		
	Under 4 Years of age	4 thru 6 Years of age	7 or More Years of age
Under 16'	$ 1,000	$ 700	$ 400
16' but less than 17.5'	1,500	1,000	800
17.5' but less than 20'	3,000	2,000	1,500
20' but less than 22.5'	5,000	3,300	2,500
22.5' but less than 25'	7,500	5,000	3,800
25' but less than 27.5'	10,500	7,000	5,300
27.5' but less than 30'	14,000	9,300	7,000
30' but less than 35'	18,500	12,300	9,300
35' but less than 40'	24,000	16,000	12,000
40' but less than 50'	31,500	21,000	15,800
50' but less than 60'	41,000	27,300	20,500
60' or over	50,000	33,000	24,800

(d) The payment of such excise shall exempt such owner from any other tax applicable to said vessels and their equipment under chapter fifty-nine.

(e) If an owner fails to make such a return within the time herein provided, the assessors may abate the tax otherwise imposed by this chapter if such owner provides the assessors with a reasonable excuse for failure to file such return and if the return is filed on or before October thirty-first of the year in which the tax is assessed; but no abatement hereunder shall reduce the tax otherwise imposed to an amount less than the sum of the excise imposed by this section plus fifty per cent thereof.

(f) Said excise shall be assessed in the city or town where the vessel is habitually moored or docked, or in the case of a ship or vessel which has

no mooring or docking space, where the ship or vessel is principally situated; provided, however, that if more than one municipality owns property in a harbor, the municipality which maintains such harbor in which the vessel is habitually moored, docked or situated shall assess and collect said excise; and provided, further, that where more than one municipality maintains portions of the harbor, the municipality which maintains that portion of the harbor in which the vessel is habitually moored, docked or situated shall assess and collect said excise.

(g) Nothing in this section shall be construed to prevent the board of assessors from granting an abatement in any case in which the excise aforesaid is, in the opinion of the board, excessive.

(h) If during any fiscal year ownership of a boat subject to an excise under this chapter is transferred by sale or otherwise, or if during any fiscal year the owner of a boat subject to such an excise removes to another state and registers a boat in such other state and surrenders or does not renew his registration in this state, the excise under this chapter shall be reduced, upon application, by an abatement equal to the proportion of an excise under this chapter on such boat for the full fiscal year which the number of months in said year remaining after the month in which such transfer by sale or otherwise or such surrender or expiration of registration occurs bears to twelve.

(i) All sums received from the excise imposed under this chapter shall be paid into the treasury of the city or town and fifty per cent of said excise shall be credited to the municipal waterways improvement and maintenance fund established under the provisions of section five G of chapter forty.
Added by St.1978, c. 581, § 5. Amended by St.1983, c. 25, § 1; St.1985, c. 526; St.1989, c. 687, § 19.

§ 3. Exemptions

The excise imposed by this chapter shall not apply to vessels described in section eight of chapter fifty-nine and in section sixty-seven of chapter sixty-three; to vessels owned by the commonwealth or any political subdivision thereof; to law enforcement vessels; to vessels under construction; to ferries; to boats, fishing gear and nets owned and actually used by the owner in the prosecution of his business if engaged exclusively in commercial fishing, with a total value of ten thousand dollars or less; nor to other vessels with a value of one thousand dollars or less. Said exemptions shall not subject said vessels and their equipment to any other tax under section four of chapter fifty-nine.
Added by St.1978, c. 581, § 5.

§ 4. Collector of taxes; penalties

The board of assessors, upon assessing the excise imposed by this chapter, shall commit the same to the collector of taxes with their warrant for the collection thereof. The collector of taxes shall seasonably notify the owner of the excise assessed and the due date, but failure to receive notice shall not affect the validity of the excise. Said excise shall be due and payable at the expiration of sixty days from the date upon which the notice was issued by the collector pursuant to this chapter.

Failure to pay said excise by the due date shall result in a penalty being imposed which shall be equal to twenty dollars or twenty per cent of the amount of the excise due, whichever is greater. The penalty shall be in addition to the amount of excise due and any interest thereon imposed by law. If said excise remains unpaid after the due date, the harbormaster of a city or town shall refuse to allow the vessel to moor, dock, or otherwise be situated within the waterways of said city or town. All sums received from said penalty shall be credited to the Municipal Waterways Improvement and Maintenance Fund, established under the provisions of clause (72) of section five of chapter forty.
Added by St.1978, c. 581, § 5. Amended by St.1987, c. 175.

§ 5. Collection provisions

The provisions of law relative to the collection, payment, abatement, verification and administration of the motor vehicle excise imposed under chapter sixty A shall so far as pertinent apply to the excise imposed under this chapter.
Added by St.1978, c. 581, § 5.

§ 6. Ship and vessel information

The commissioner of corporations and taxation shall annually transmit to the director of marine and recreational vehicles a list of all ships or vessels documented as of July first under the laws of the United States whose owners reside in Massachusetts. The boat list shall include for each boat the name and residence of the registered owner, the documentation number, type, length, and model year of the boat and type and horsepower of the engine or motor used to propel said boat and the

city or town in which it is habitually moored or docked.

Added by St.1978, c. 581, § 5.

CHAPTER 61

CLASSIFICATION AND TAXATION OF FOREST LANDS AND FOREST PRODUCTS

St.1941, c. 652, § 1, rewrote the Chapter 61 heading, which prior thereto read, "Taxation of Forest Products and Classification and Taxation of Forest Lands".

St.1981, c. 768, § 1, struck out Chapter 61, entitled "Classification and Taxation of Forest Lands and Forest Products", consisting of §§ 1 to 7, and enacted a new Chapter 61, consisting of §§ 1 to 8.

Section

1. Definitions.
2. Classification of forest lands by assessors; application.
2A. Tax rate for certified forest land.
3. Valuation of forest production land; assessment of property taxes; grievance procedure.
4. Valuation of buildings and dwellings located on forest production land.
5. Special and betterment assessments.
6. Conveyance tax on forest production land sold for other use; rate; exceptions.
7. Disqualification of land from classification; roll-back taxes; calculation; interest.
8. Conversion of land to residential, industrial or commercial use; notice to city or town; first refusal option.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Definitions

For purposes of this chapter, unless the context otherwise requires, the following words shall have the following meanings:—

"Cut", sever or taken from the soil.

"Forest land", land devoted to the growth of forest products. Upon application, the state forester may allow accessory land devoted to other non-timber uses to be included in certification.

"Forest products", wood, timber, Christmas trees, other tree forest growth and any other product produced by forest vegetation.

"Certification", approval of a forest management plan by the state forester.

"Contiguous land", land separated from other land under the same ownership by a public or private way, waterway or an easement for water supply.

"Forest management plan" or "management plan", a completed copy of a form provided by the state forester executed by the owner and the state forester that provides for a ten year program of forest management, including intermediate and regeneration cuttings.

"Cutting plan", a completed copy of a form approved by the state forester which describes the species, dimensions, and quantity of a proposed forest crop to be harvested and which is certified by the state forester as being in accordance with the provisions of section forty to forty-six, inclusive, of chapter one hundred and thirty-two.

"Not used for purposes incompatible with forest production", uses formally proposed or permitted that do not interfere with or reduce the quantity and quality of a continuous forest crop.

"Owner", person, persons, or another legal entity holding title to a parcel of forest land.

"Parcel", land held by the same owner under a deed of title which has no encumbrance incompatible with this chapter.

"Region", one of the five geographic subdivisions of the commonwealth utilized for administrative purposes by the department of environmental management.

Added by St.1981, c. 768, § 1. Amended by St.2006, c. 394, §§ 2 to 6, eff. Mar. 22, 2007.

§ 2. Classification of forest lands by assessors; application

Except as otherwise herein provided, all forest land, parcels of not less than 10 contiguous acres in area, used for forest production shall be classified by the assessors as forest land upon written application sufficient for identification and certification by the state forester. Such application shall be accompanied by a forest management plan. The state forester will have sole responsibility for review and certification with regard to forest land and forest production.

The rate of tax applicable to certified forest land shall be the rate determined to be applicable to class three, commercial property under chapter 59.

Upon receipt of such certified application, the board of assessors shall, upon a form approved by the commissioner of revenue, forthwith record in the registry of deeds of the county or district in which the parcel is situated, a statement of such classification which shall constitute a lien upon the land for taxes levied under the provisions of this chapter. The statement shall name the owner and a description of the land. The assessors shall return a copy of said recorded statement to the office of the state forester containing the date, book and page number of such recording. Said lien may be discharged by the board of assessors. All recording fees in connection with such statement or discharge shall be paid by the owner of such parcel.

Land shall be removed from classification by the assessor unless, at least every ten years, the owner files with said assessor a new certification by the state forester. The state forester, or his designee, shall have the authority to enter on private lands for the purpose of making investigations to assure compliance with this chapter. Classified forest land shall be subject to the taxes provided in section three. Buildings and structures and the land on which they are erected and which is accessory to their use shall not be entitled to be classified as forest land.

If a single parcel or tract of land consists in part of forest land and in part of other land, the portion consisting of forest land, if said portion comprises at least ten contiguous acres in area and otherwise conforms to the requirements of this chapter shall be classified forest land upon application as hereinbefore provided.

An application to have land classified as forest land shall be submitted to the state forester prior to July first in any year. After certification the owner shall submit to the assessors prior to October first of the same year evidence of certification together with the approved management plan. Classification shall take effect on January first of the year following certification and taxation under this chapter and shall commence with the fiscal year beginning after said January first.

When in judgment of the assessors, land which is classified as forest land or which is the subject of an application for such classification is not being managed under a program, or is being used for purposes incompatible with forest production, or does not otherwise qualify under this chapter, the assessors may, on or before December first in any year file an appeal in writing mailed by certified mail to the state forester requesting a denial of application or, in the case of classified land, requesting removal of the land from such classification. Such appeal shall state the reasons for such request. A copy of the appeal shall be mailed by the assessors by certified mail to the owner of the land. The state forester may initiate, on or before December first of any year, a proceeding to remove land from classification, sending notice of his action by certified mail to the assessors and the owner of such land. The state forester may deny the owner's application, may withdraw all or part of the land from classification, or may grant the application, imposing such terms and conditions as he deems reasonable to carry out the purpose of this chapter, and shall notify the assessors and the owner of his decision no later than March first of the following year. If the owner or the assessors are aggrieved by his decision they may, on or before April fifteenth, give notice to the state forester of a claim of appeal. The state forester shall convene on or before May fifteenth, a panel in the region in which the land is located. Said panel shall consist of three members, one of whom shall be named by the state forester, one of whom shall be named by the assessors, and one of whom shall be named by the state forester and the assessors. Said panel shall give notice of the date and place of the hearing in writing to the parties seven days at least before the date of said hearing. The panel shall furnish the parties, in writing, a notice of its decision within ten days after the adjournment of said hearing. Decisions of the panel shall be by majority vote of its members. If the owner or the assessors are aggrieved by such decision, they may, within forty-five days from receipt of the decision, petition either the superior court in the county in which the land is located for a review of such decision under the provisions of chapter thirty A or the appellate tax board under the provisions of chapter fifty-eight A, and said land shall not be classified or withdrawn from classification until the final determination of such petition. The state forester may adopt such regulations as he deems necessary to carry out the provisions of this chapter.

Added by St.1981, c. 768, § 1. Amended by St.2006, c. 394, §§ 7 to 11, eff. Mar. 22, 2007.

§ 2A. Tax rate for certified forest land

In a city or town that accepts this section, the rate of tax applicable to certified forest land shall

be the rate determined to be applicable to class two, open space.
Added by St.2006, c. 394, § 12, eff. Mar. 22, 2007.

§ 3. Valuation of forest production land; assessment of property taxes; grievance procedure

For general property tax purposes, the value of land that is actively devoted to forest production use during the tax year in issue and has not been used for purposes incompatible with forest production in the 2 immediately preceding tax years, shall, upon application of the owner of that land and approval of that application, be the value that the land has for forest production purposes.

The board of assessors of a city or town, in valuing land with respect to which timely application has been made and approved as provided in this chapter, shall consider only those indicia of value which the land has for forest production. The board, in establishing the use value of land, shall use the list of ranges published under section 11 of chapter 61A and its personal knowledge, judgment and experience as to forest land values, but these factors shall be limited to data specific to forest production.

The land tax shall be committed to the collector for collection in the same manner as taxes assessed under chapter 59. The collector shall notify the person assessed of the amount of the tax in the manner provided in section 3 of chapter 60. For the collection of taxes under this chapter the collector shall have all the remedies provided by chapter 60. Taxes so assessed shall be due and payable on October first of the year in which the return is required to be made, and, if not paid on or before November first of the year of assessment, or within 30 days after notification of the taxes if the notice is given after October first, shall bear interest at the rate as provided in section 57 of chapter 59. Any person aggrieved by the assessment of a tax under this section may, within 30 days after the date of notice of the tax, apply in writing to the assessors upon a form approved by the commissioner of revenue for abatement of that tax, and if the assessors, after hearing, find that the tax is excessive, they shall abate it in whole or in part. If the tax has been paid, the town treasurer shall repay to the person assessed the amount of the abatement with interest on that amount at the current rate provided in section 69 of said chapter 59. Any person aggrieved by the refusal of the assessors to abate a tax in whole or in part or by their failure to act upon an application may appeal to the appellate tax board within 30 days after the date of notice of decision of the assessors or within 3 months after the date of the application for abatement, whichever date is later. Any overpayment of tax determined by decision of the appellate tax board shall be reimbursed by the town treasurer with interest at the current rate as provided in said section 69.
Added by St.1981, c. 768, § 1. Amended by St.1986, c. 557, § 70; St.2006, c. 394, § 13, eff. Mar. 22, 2007.

§ 4. Valuation of buildings and dwellings located on forest production land

All buildings located on land which is valued, assessed and taxed on the basis of its forest production use in accordance with this chapter and all land occupied by a dwelling or regularly used for family living shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable property.
Added by St.1981, c. 768, § 1. Amended by St.2006, c. 394, § 14, eff. Mar. 22, 2007.

§ 5. Special and betterment assessments

Land qualifying for valuation, assessment and taxation under this chapter shall be subject to special assessments or betterment assessments to the pro rata extent that the service or facility financed by the assessment is used for improving the forest production use capability of the land or for the personal benefit of the owner of the land. These assessments shall, upon application, be suspended during the time the land is in forest production use and shall become due and payable as of the date when the use of the land is changed. Payment of the assessment and interest on it shall be made in accordance with section 13 of chapter 80, but interest shall be computed from the date of the change in use. In the event only a portion of a tract of land which benefits from a suspension of payment is changed from this use, the assessment shall become due and payable as of the date when the use was changed only to the extent of and in the proportion that the frontage of that portion bears to the street frontage of the entire tract of land which originally benefited from a suspension of payment. Upon receipt of full payment of a portion of a suspended assessment, the tax collector shall dissolve the lien for the assessment insofar as it affects the portion of the land changed from forest production use. The lien for the portion of the original assessment which remains unpaid shall

continue and remain in full force and effect until dissolved in accordance with law. A request for a release shall be made in writing to the tax collector and shall be accompanied by a plan and any other information that is required in the case of a request for a division of an assessment under section 4. Added by St.1981, c. 768, § 1. Amended by St.1987, c. 89; St.2006, c. 394, § 15, eff. Mar. 22, 2007.

§ 6. Conveyance tax on forest production land sold for other use; rate; exceptions

[Text of section applicable as provided by 2006, 394, Sec. 51.]

Any land in forest production use which is valued, assessed and taxed under this chapter, if sold for other use within a period of 10 years after the date of its acquisition or after the earliest date of its uninterrupted use by the current owner in forest production, whichever is earlier, shall be subject to a conveyance tax applicable to the total sales price of that land, which tax shall be in addition to taxes that may be imposed under any other law. Notwithstanding the previous sentence, no conveyance tax shall be assessed if the land involved, or a lesser interest in that land, is acquired for a natural resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold or converted to commercial, residential or industrial use within 5 years after acquisition by a nonprofit conservation organization, the conveyance tax shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had such transaction been subject to a conveyance tax. The conveyance tax shall be assessed on only that portion of land whose use has changed. The conveyance tax shall be at the following rate: 10 per cent if sold within the first year of ownership; 9 per cent if sold within the second year of ownership; 8 per cent if sold within the third year of ownership; 7 per cent if sold within the fourth year of ownership; 6 per cent if sold within the fifth year of ownership; 5 per cent if sold within the sixth year of ownership; 4 per cent if sold within the seventh year of ownership; 3 per cent if sold within the eighth year of ownership; 2 per cent if sold within the ninth year of ownership; and 1 per cent if sold within the tenth year of ownership. No conveyance tax shall be imposed under this section after the end of the tenth year of ownership. The conveyance tax shall be due and payable by the grantor at the time of transfer of the property by deed or other instrument of conveyance and shall be payable to the tax collector of the city or town in which the property is entered upon the tax list, but in the case of taking by eminent domain, the value of the property taken shall be determined in accordance with chapter 79, and the amount of conveyance tax, if any, shall be added as an added value. If there is filed with the board of assessors an affidavit by the purchaser that the land is being purchased for forest production use, no conveyance tax shall be payable by the seller by reasons of the sale, but if the land is not in fact continued in this use for at least 5 consecutive years, the purchaser shall be liable for any conveyance tax that would have been payable on the sale as a sale for other use. The conveyance tax shall be assessed on only that portion of land for which the use has changed.

Except with respect to eminent domain takings, this section shall not be applicable to the following: mortgage deeds; deeds to or by the city or town in which the land is located; deeds which correct, modify, supplement or confirm a deed previously recorded; deeds between husband and wife and parent and child when no consideration is received; tax deeds; deeds releasing any property which is a security for a debt or other obligation; deeds for division of property between owners without monetary consideration; foreclosures of mortgages and conveyances by the foreclosing parties; deeds made under a merger of a corporation or by a subsidiary corporation to its parent corporation for no consideration other than the cancellation and surrender of capital stock of the subsidiary which do not change beneficial ownership; and property transferred by devise or otherwise as a result of death.

A nonexempt transfer after any exempt transfer or transfers shall be subject to this section. Upon the nonexempt transfer, the date of acquisition by the grantor, for purposes of this section, shall be considered to be the date of the last preceding transfer not excluded by the foregoing provisions from application of this section, but in the case of transfer by a grantor who has acquired the property from a foreclosing mortgagee, the date of acquisition shall be considered to be the date of the acquisition. Any land in forest production use which is valued, assessed and taxed under this chapter, if changed by the owner of the land to another use within a period of 10 years after the date of its acquisition by that owner, shall be sub-

ject to the conveyance tax applicable under this section at the time of the change in use as if there had been an actual conveyance, and the value of the land for the purpose of determining a total sales price shall be fair market value as determined by the board of assessors of the city or town involved for all other property.

If any tax imposed under this section should not be paid, the collector of taxes shall have the same powers and be subject to the same duties with respect to these taxes as in the case of the annual taxes upon real estate, and the law in regard to the collection of the annual taxes, the sale of land for the nonpayment of taxes and redemption shall apply to these taxes.

No conveyance tax imposed by this section will be assessed on land that is considered to be in agricultural use under sections 1 and 3 of chapter 61A, in horticultural use under sections 2 and 3 of said chapter 61A or recreational land under section 1 of chapter 61B.

Added by St.1981, c. 768, § 1. Amended by St.2006, c. 394, § 16, eff. Mar. 22, 2007.

§ 7. Disqualification of land from classification; roll-back taxes; calculation; interest

Whenever land which is valued, assessed and taxed under this chapter no longer meets the definition of forest land, it shall be subject to additional taxes, in this section called roll-back taxes, in the tax year in which it is disqualified and in each of the 4 immediately preceding tax years in which the land was so valued, assessed and taxed, but these roll-back taxes shall not apply unless the amount of the taxes, as computed under this section, exceeds the amount, imposed under section 6 and, in that case, the land shall not be subject to the conveyance tax imposed under said section 6. For each tax year, the roll-back tax shall be an amount equal to the difference, if any, between the taxes paid or payable for that tax year in accordance with this chapter and the taxes that would have been paid or payable in that tax year had the land been valued, assessed and taxed without regard to these provisions.

If, at the time during a tax year when a change in land use has occurred, the land is not valued, assessed and taxed under this chapter, then the land shall be subject to roll-back taxes only for those years of the 5 immediately preceding years in which the land was valued, assessed and taxed under this chapter.

In determining the amount of roll-back taxes on land which has undergone a change in use, the board of assessors shall ascertain the following for each of the roll-back tax years involved:—

(a) the full and fair value of the land under the valuation standard applicable to other land in the city or town;

(b) the amount of the land assessment for the particular tax year;

(c) the amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under subsection (a); and

(d) the amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under subsection (c) by the general property tax rate of the city or town applicable for that tax year.

Roll-back taxes will be subject to simple interest at a rate of 5 per cent per annum. If the board of assessors determines that the total amount of roll-back taxes to be assessed under this section, before the addition of any interest, as provided for in the preceding paragraph, would be less than $10, no tax shall be assessed.

No roll-back tax imposed by this section will be assessed on land that meets the definition of land in agricultural use under sections 1 and 3 of chapter 61A or the definition of land in horticultural use under sections 2 and 3 of said chapter 61A or the definition of recreational land under section 1 of chapter 61B.

Land retained as open space as required for the mitigation of a development shall be subject to the roll-back taxes imposed by this section.

Added by St.1981, c. 768, § 1. Amended by St.2006, c. 394, § 17, eff. Mar. 22, 2007.

§ 8. Conversion of land to residential, industrial or commercial use; notice to city or town; first refusal option

Land taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed or within 1 year after that time unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use.

The discontinuance of forest certification shall not, in itself, for the purposes of this section, be

considered a conversion. Specific use of land for a residence for the owner, the owner's spouse or a parent, grandparent, child, grandchild, or brother or sister of the owner, or surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full-time in the forest use of that land, shall not be a conversion for the purposes of this section, and a certificate of the board of assessors, recorded with the registry of deeds, shall conclusively establish that particular use.

Any notice of intent to sell for other use shall be accompanied by a statement of intent to sell, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner.

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter, and which shall be a bona fide offer as described below.

Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

Any notice of intent to convert to other use shall be accompanied by a statement of intent to convert, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, the name, address and telephone number of the landowner and the landowner's attorney, if any.

The notice of intent to sell or convert shall be sent by the landowner, by certified mail or hand-delivered, to the mayor and city council of a city, or board of selectmen of a town, and in the case of either a city or a town, to its board of assessors, to its planning board and conservation commission, if any, and to the state forester.

A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell or convert shall be conclusive evidence that the landowner has mailed the notice in the manner and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to which it relates.

The notice of intent to sell or convert shall be considered to have been duly mailed if addressed to the mayor and city council or board of selectmen in care of the city or town clerk; to the planning board and conservation commission if addressed to them directly; to the state forester if addressed to the commissioner of the department of conservation and recreation and to the assessors if addressed to them directly.

If the notice of intent to sell or convert does not contain all of the material as described above, then the town or city, within 30 days after receipt, shall notify the landowner in writing that the notice is insufficient and does not comply.

For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.

In the case of intended or determined conversion not involving sale, the municipality shall have an option to purchase the land at full and fair market value to be determined by an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee, the original appraisal to be completed and delivered to the landowner within 30 days after the notice of conversion to the municipality. In the event that the landowner is dissatisfied with the original appraisal, the landowner may, at the landowner's expense, contract for a second appraisal, the second appraisal to be completed within 60 days after the delivery of the notice to convert. If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties shall contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of

conversion to the municipality and shall be the final determination of consideration. Upon agreement of a consideration, the city or town shall then have 120 days to exercise its option. During the appraisal process, the landowner may revoke the intent to convert at any time and with no recourse to either party.

This option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at such address as may be specified in the notice of intent. Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

The notice of exercise shall also be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of it.

The notice to the landowner of the city or town's election to exercise its option shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the mayor or board of selectmen, or upon expiration of any extended period the landowner has agreed to in writing, whichever is later.

At the public hearing or a further public hearing, the city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under terms and conditions that the mayor or board of selectmen may consider appropriate. Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

The assignment shall be for the purpose of maintaining no less than 70 per cent of the land in use as forest land as defined in section 1 of this chapter, as agricultural and horticultural land as defined in sections 1 and 2 of chapter 61A or as recreation land as defined in section 1 of chapter 61B, and in no case shall the assignee develop a greater proportion of the land than was proposed by the developer whose offer gave rise to the assignment. All land other than land that is to be developed shall then be bound by a permanent deed restriction that meets the requirements of chapter 184.

If the first refusal option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions as provided in this section, the mayor or board of selectmen shall provide written notice of assignment to the landowner.

The notice of assignment shall state the name and address of the organization or agency of the commonwealth which will exercise the option in addition to the terms and conditions of the assignment. The notice of assignment shall be recorded with the registry of deeds.

Failure to record either the notice of exercise or the notice of assignment within the 120 day period shall be conclusive evidence that the city or town has not exercised its option.

If the option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions, the option may be exercised by the assignee only by written notice to the landowner signed by the assignee, mailed to the landowner by certified mail at the address that is specified in the notice of intent. The notice of exercise shall also be recorded with the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice of exercise to the landowner shall be accompanied by a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended period the landowner has agreed to in writing, from the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the assignee.

During the 120 day period, the city or town or its assignees, shall have the right, at reasonable times and upon reasonable notice, to enter upon said land for the purpose of surveying and inspecting said land, including but not limited to soil testing for purposes of Title V and the taking of water samples.

The city or town or its assignee shall have all rights assigned to the buyer in the purchase and sales agreement contained in the notice of intent.

If the city or town elects not to exercise the option, and not to assign its right to exercise the option, the city or town shall send written notice of non-exercise signed by the mayor or board of selectmen to the landowner by certified mail at the

address that is specified in the notice of intent. The notice of non-exercise shall contain the name of the owner of record of the land and description of the premises adequate for identification of them, and shall be recorded with the registry of deeds.

No sale or conversion of the land shall be consummated until the option period has expired or the notice of non-exercise has been recorded with the registry of deeds, and no sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided in this section.

This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the sale to the parties in the manner described in this section for notice of intent to sell or convert, and the giving of this notice may be established by an affidavit as described in this section.

Added by St.1981, c. 768, § 1. Amended by St.1987, c. 95, §§ 1, 2; St.1987, c. 142, §§ 1, 2; St.2006, c. 394, § 18, eff. Mar. 22, 2007.

CHAPTER 61A

ASSESSMENT AND TAXATION OF AGRICULTURAL AND HORTICULTURAL LAND

Chapter 61A of the General Laws was added by St.1973, c. 1118, § 1. The title of Chapter 61A was inserted by St.1986, c. 557, § 71.

Section

1. Land in agricultural use defined.
2. Land in horticultural use defined.
3. Land of five-acre minimum area actively devoted to agricultural or horticultural uses defined; gross sales and program payment standard.
4. Valuation of land in agricultural, etc. use; contiguous land; tax rate.
4A. Tax rate for land actively devoted to agricultural or horticultural use.
5. Contiguous land under one ownership within more than one city or town.
6. Annual determination of eligibility for valuation; application; form; certification.
7. Additional assessment; change in use in pre-tax year between October 1 and June 30.
8. Timely filing of application in towns or cities with programs of revaluation not completed by October 1 of pre-tax year.
9. Allowance or disallowance of application for valuation; notice; liens.
10. Factors to be considered in valuing land.
11. Farmland valuation advisory commission; expenditures.
12. Sale of land or change of use; liability for conveyance tax; exemptions.
13. Change of use; liability for roll-back taxes.
14. Sale for or conversion to residential or commercial use; notice of intent to city or town; option to purchase; assignment of option.
15. Taxation of buildings and land occupied by dwelling.
16. Continuance of land valuation, assessment and taxation under this chapter dependent upon qualifying use.
17. Separation of land to other use; liability for conveyance or roll-back taxes; continuing qualification of remainder.
18. Special or betterment assessments; payment; interest.
19. Roll-back taxes; procedures for assessment; appeal to appellate tax board.
19A. Sale of land; certification of taxes paid or payable.
20. Valuation and assessment for purposes other than provisions of this chapter; equalization.
21. Factual details on tax list.
22. Rules and regulations; forms and procedures.
23. Use of valuation, etc. procedures to evade taxes; penalties.
24. Severability.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Land in agricultural use defined

Land shall be deemed to be in agricultural use when primarily and directly used in raising animals, including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals, for the purpose of selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market.

Added by St.1973, c. 1118, § 1.

§ 2. Land in horticultural use defined

Land shall be considered to be in horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flower, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling these products in the regular course of business; or when primarily and directly used in raising forest products under a certified forest management plan, approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business; or when primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market.

Added by St.1973, c. 1118, § 1. Amended by St.1975, c. 794, § 1; St.2006, c. 394, § 19, eff. Mar. 22, 2007.

§ 3. Land of five-acre minimum area actively devoted to agricultural or horticultural uses defined; gross sales and program payment standard

Land not less than five acres in area shall be deemed to be actively devoted to agricultural or horticultural uses when the gross sales of agricultural, horticultural or agricultural and horticultural

products resulting from such uses together with the amount, if any, payable under a soil conservation or pollution abatement program of the federal government or the commonwealth total not less than five hundred dollars per year or when the use of such land is clearly proven to be for the purpose of achieving an annual total of not less than five hundred dollars from such gross sales and program payments within the normal product development period as determined by the farmland valuation advisory commission established pursuant to section eleven of this chapter. In cases where the land is more than five acres in area, the gross sales and program payment standard above set forth shall be increased at the rate of five dollars per acre except in the case of woodland or wetland for which such increase shall be at the rate of fifty cents per acre.

Added by St.1973, c. 1118, § 1.

§ 4. Valuation of land in agricultural, etc. use; contiguous land; tax rate

For general property tax purposes, the value of land, not less than five acres in area, which is actively devoted to agricultural, horticultural or agricultural and horticultural uses during the tax year in issue and has been so devoted for at least the two immediately preceding tax years, shall, upon application of the owner of such land and approval thereof, be that value which such land has for agricultural or horticultural purposes. For the said tax purposes, land so devoted shall be deemed to include such contiguous land under the same ownership as is not committed to residential, industrial or commercial use and which is covered by application submitted pursuant to section six. Land shall be deemed contiguous if it is separated from other land under the same ownership only by a public or private way or waterway.

Land under the same ownership shall be deemed contiguous if it is connected to other land under the same ownership by an easement for water supply. All such land which is contiguous or is deemed contiguous for purposes of this chapter shall not exceed in acreage one hundred per cent of the acreage which is actively devoted to agricultural, horticultural or agricultural and horticultural uses.

The rate of tax applicable to such agricultural or horticultural land shall be the rate determined to be applicable to class three, commercial property under chapter fifty-nine.

Added by St.1973, c. 1118, § 1. Amended by St.1979, c. 797, § 21; St.1980, c. 261, § 18; St.1985, c. 387, § 1.

§ 4A. Tax rate for land actively devoted to agricultural or horticultural use

In a city or town that accepts this section, the rate of tax applicable to land actively devoted to agricultural, horticultural or agricultural and horticultural uses shall be the rate determined to be applicable to class two, open space.

Added by St.2006, c. 394, § 20, eff. Mar. 22, 2007.

§ 5. Contiguous land under one ownership within more than one city or town

Where contiguous land in agricultural, horticultural or agricultural and horticultural uses under one ownership is located in more than one city or town, compliance with the five-acre minimum area requirements of section four shall be determined on the basis of the entire area of such land and not on the basis of the land area which falls within the bounds of any particular city or town.

Added by St.1973, c. 1118, § 1.

§ 6. Annual determination of eligibility for valuation; application; form; certification

Eligibility of land for valuation, assessment and taxation pursuant to section four shall be determined separately for each tax year. Application therefor shall be submitted to the board of assessors of each city or town in which such land is situated not later than October first of the year preceding each tax year for which such valuation, assessment and taxation are being sought and may not thereafter be withdrawn. Application shall be made on a form prescribed by the commissioner of revenue and provided for the use of claimants by said board of assessors. Such form shall provide for the reporting of information pertinent to the provisions of this chapter and of Article XCIX of the Articles of Amendment to the Constitution of the Commonwealth and for certification by the applicant that he will immediately notify the board of assessors in writing of any subsequently developing circumstance within his control or knowledge which may cause a change in use of the land covered by such form prior to October first next following. Any application submitted under this section and covering leased land shall be accompanied by a written statement signed by any lessee of

his intent to use such land for the purposes set forth in said application. A certification by a landowner that the information set forth in his application is true may be prescribed by said commissioner to be in lieu of a sworn statement to that effect. An application so certified shall be considered as if made under oath and subject to the same penalties as provided by law for perjury.

Added by St.1973, c. 1118, § 1. Amended by St.1978, c. 514, § 90.

§ 7. Additional assessment; change in use in pre-tax year between October 1 and June 30

If a change in use of land actively devoted to agricultural, horticultural or agricultural and horticultural use occurs between October first and June thirtieth of the year preceding the tax year, the board of assessors shall disallow or nullify the application filed under authority of section six, and, after examination and inquiry, shall determine the full and fair value of said land under the valuation standard applicable to other land and shall assess the same according to such value. If, notwithstanding such change of use, the land is valued, assessed and taxed under the provisions of this chapter in the ensuing year, upon notice thereof said board shall enter an assessment and the amount of the increased tax resulting from such assessment, as an added assessment and tax against such land, in the "Omitted list" for the particular year involved in the manner prescribed in section seventy-five of chapter fifty-nine. The amount of the added assessment shall be equal to the difference, if any, between the assessment imposed under this chapter and the assessment which would have been imposed had the land been valued and assessed as other land. The enforcement and collection of additional taxes resulting from any additional assessment so imposed shall be as provided by said chapter fifty-nine. The additional assessment imposed under this section shall not affect the conveyance or roll-back taxes, if any, applicable under sections twelve and thirteen.

Added by St.1973, c. 1118, § 1. Amended by St.2006, c. 394, § 21, eff. Mar. 22, 2007.

§ 8. Timely filing of application in towns or cities with programs of revaluation not completed by October 1 of pre-tax year

In any city or town in which a program of revaluation of all property therein has been or shall be undertaken and completed in time to be reflected in the assessments for the next succeeding tax year but not insufficient time to permit landowners to make application prior to October first of the pre-tax year for the valuation, assessment and taxation of their lands for the ensuing tax year on the basis of being actively devoted to agricultural or horticultural use, any such application which has been or shall be filed with the board of assessors after October first and not more than thirty days following the mailing of the tax bill containing the new valuation shall be deemed to have been timely made for the tax year of the revaluation program, notwithstanding any provision of this chapter to the contrary. If such application is approved and the lands qualify for valuation, assessment and taxation as lands actively devoted to agricultural, horticultural or agricultural and horticultural use in the ensuing tax year, that portion of any tax assessed for such year which is in excess of the tax which would have been assessed on such lands had such application been timely made and approved shall be abated.

Added by St.1973, c. 1118, § 1. Amended by St.1976, c. 505, § 1.

§ 9. Allowance or disallowance of application for valuation; notice; liens

An application for valuation, assessment and taxation of land under the provisions of this chapter shall be allowed or disallowed by the board of assessors of the city or town in which such land is located within three months of the filing thereof. An application for valuation, assessment and taxation of land under the provisions of this chapter shall be disallowed by the board of assessors of the city or town in which such land is located if, in their judgment such land, in whole or in part, does not qualify thereunder. If any board of assessors shall determine that any application pursuant to this chapter is submitted for the purpose of evading payment of full and proper taxes, such board shall be and hereby is authorized to disallow such application. The failure of a board of assessors to allow or disallow any such application within three months following the filing thereof, shall be deemed an allowance of such application. The board of assessors shall, within ten days of an allowance, or disallowance, send written notice of such allowance, or disallowance, by certified mail to the landowner applicant and shall set forth therein the reason or reasons for disallowance together with a statement advising the landowner of his right to appeal therefrom as provided in section

nineteen. In the case of a partial disallowance, the landowner shall be permitted to file an amendment to the original application.

With respect to the first application relating to a parcel of land which has been approved, and any subsequent such applications after a lapse of time when such land has not been valued, assessed and taxed under this chapter or after a change of record ownership of such land, the board of assessors shall forthwith cause to be recorded in the registry of deeds of the county or district in which the city or town is situated a statement of their action which shall constitute a lien upon the land covered by such application for such taxes as may be levied under the provisions of this chapter. The statement shall name the owner or owners of record and shall include a description of the land adequate for identification. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. Upon application by any record owner, such liens shall be released by the board of assessors with respect to any parcel of land as provided below in this section upon the applicable facts being established by their records or by affidavits or otherwise.

All liens for special assessments or betterment assessments under section eighteen shall be released in full or in part upon its being so established that any such assessment or portion of such assessment which have become due have been paid.

All liens for conveyance tax under section twelve, shall be released upon its being so established that no conveyance or change of use by the owner at the time of such release will result in a conveyance tax under said section twelve or that any such taxes which have become due have been paid.

All liens for roll-back taxes under section thirteen, other than roll-back taxes based on change of use after the date of such release, shall be released upon its being so established that no roll-back taxes have become due or that any such taxes which have become due have been paid.

The board of assessors shall also have the power and authority to release any such liens to correct any errors or omissions. Any release under this section shall be recorded with the registry of deeds.

When any land which has been valued, assessed and taxed under this chapter ceases to be so valued, assessed and taxed the board of assessors shall forthwith record in the registry of deeds a statement to that effect which shall include the name of the record owner or owners, the date when such land ceased to be so valued, assessed and taxed and a description of the land adequate for identification.

All recording fees paid pursuant to the provisions of this chapter whether for statements of liens, certificates, releases or otherwise shall be borne by the owner of record of the land.

Added by St.1973, c. 1118, § 1. Amended by St.1975, c. 648; St.1975, c. 794, §§ 2, 3; St.1978, c. 382, § 1; St.1985, c. 387, § 2.

§ 10. Factors to be considered in valuing land

The board of assessors of a city or town, in valuing land with respect to which timely application has been made and approved as provided in this chapter, shall consider only those indicia of value which such land has for agricultural, horticultural or agricultural and horticultural uses. Said board, in establishing the use value of such land, shall use the list of ranges published pursuant to section eleven and its personal knowledge, judgment and experience as to such agricultural land values but these factors shall be limited to data specific to the crop or product being grown or produced.

Added by St.1973, c. 1118, § 1. Amended by St.1983, c. 709; St.2006, c. 394, § 22, eff. Mar. 22, 2007.

§ 11. Farmland valuation advisory commission; expenditures

There is hereby created a farmland valuation advisory commission, the members of which shall be the commissioner of revenue who shall be chairman, the commissioner of agriculture, commissioner of the department of conservation and recreation, the director of housing and community development, the dean of the college of food and natural resources of the University of Massachusetts, or their respective designees, and one person to be appointed by the governor who shall be a member of a local board of assessors. The commission shall meet from time to time at the call of any of the above named commissioners and shall, prior to January first of each year, determine, for application during the ensuing tax year, a range of values on a per acre basis for each of the several classifications of land in agricultural or horticultural or forest land uses in the several counties of the commonwealth. The annual list of value ranges so determined shall be published by the commissioner

of revenue and shall be mailed by him to the board of assessors of each city and town in the commonwealth no later than February first of each year. In determining such ranges in value, the commission shall consider evidence of agricultural or horticultural land use capability available from soil surveys and such other evidence and documentation as may, in its judgment, appear pertinent.

The commissioner of revenue may expend such sums as may be appropriated for the farmland valuation advisory commission for the purposes of securing data for use in determinations by said commission and for expenses incurred in the administration of this chapter.

Added by St.1973, c. 1118, § 1. Amended by St.1976, c. 68; St.1978, c. 514, § 91; St.1998, c. 161, § 290; St.2006, c. 394, §§ 23 to 25, eff. Mar. 22, 2007.

§ 12. Sale of land or change of use; liability for conveyance tax; exemptions

Any land in agricultural, horticultural or agricultural and horticultural use which is valued, assessed and taxed under the provisions of this chapter, if sold for other use within a period of ten years from the date of its acquisition or the earliest date of its uninterrupted use by the current owner in agriculture or horticulture, whichever is earlier, shall be subject to a conveyance tax applicable to the total sales price of such land, which tax shall be in addition to such taxes as may be imposed under any other provision of law. Said conveyance tax shall be at the following rate: ten per cent if sold within the first year of ownership; nine per cent if sold within the second year of ownership; eight per cent if sold within the third year of ownership; seven per cent if sold within the fourth year of ownership; six per cent if sold within the fifth year of ownership; five per cent if sold within the sixth year of ownership; four per cent if sold within the seventh year of ownership; three per cent if sold within the eighth year of ownership; two per cent if sold within the ninth year of ownership; one per cent if sold within the tenth year of ownership. Notwithstanding the previous sentence, no conveyance tax shall be assessed if the land involved, or a lesser interest in that land, is acquired for a natural resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold or converted to commercial, residential or industrial use within 5 years after acquisition by a nonprofit conservation organization, the conveyance tax shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had that transaction been subject to a conveyance tax. The conveyance tax shall be assessed on only that portion of land on which the use has changed. No conveyance tax shall be imposed under the provisions of this section following the end of the tenth year of ownership. Said conveyance tax shall be due and payable by the grantor at the time of transfer of the property by deed or other instrument of conveyance and shall be payable to the tax collector of the city or town in which the property is entered upon the tax list. In the case of taking by eminent domain, the value of the property taken shall be determined in accordance with chapter 79, and the amount of conveyance tax, if any, shall be added to that amount as an added value. If there is filed with the board of assessors an affidavit by the purchaser that the land is being purchased for agricultural, horticultural or agricultural and horticultural use, no conveyance tax shall be payable by the seller by reason of the sale, but if the land is not continued in that use for at least 5 consecutive years, the purchaser shall be liable for any conveyance tax that would have been payable on the sale as a sale for other use. The conveyance tax shall be assessed on only that portion of land whose use has changed. Except with respect to eminent domain takings, the provisions of this section shall not be applicable to the following: mortgage deeds; deeds to or by the city or town in which such land is located; deeds which correct, modify, supplement or confirm a deed previously recorded; deeds between husband and wife and parent and child when no consideration is received; tax deeds; deeds releasing any property which is a security for a debt or other obligation; deeds for division of property between owners without monetary consideration; foreclosures of mortgages and conveyances by the foreclosing parties; deeds made pursuant to a merger of a corporation or by a subsidiary corporation to its parent corporation for no consideration other than the cancellation and surrender of capital stock of such subsidiary which do not change beneficial ownership; and property transferred by devise or otherwise as a result of death. A nonexempt transfer subsequent to any exempt transfer or transfers shall be subject to the provisions of this section. Upon such nonexempt transfer the date of acquisition by the grantor, for purposes of this section, shall be deemed to be the date of the last preceding transfer not excluded by the foregoing provisions

from application of this section; except that in the case of transfer by a grantor who has acquired the property from a foreclosing mortgagee the date of acquisition shall be deemed to be the date of such acquisition. Any land in agricultural or horticultural use which is valued, assessed and taxed under the provisions of this chapter, if changed by the owner thereof to another use within a period of ten years from the date of its acquisition by said owner, shall be subject to the conveyance tax applicable hereunder at the time of such change in use as if there had been an actual conveyance, and the value of such land for the purpose of determining a total sales price shall be fair market value as determined by the board of assessors of the city or town involved for all other property. If any tax imposed under this section should not be paid, the collector of taxes shall have the same powers and be subject to the same duties with respect to such taxes as in the case of the annual taxes upon real estate, and the law in regard to the collection of the annual taxes, to the sale of land for the nonpayment thereof and to redemption therefrom shall apply to such taxes, so far as the same are applicable.

No conveyance tax will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or the definition of recreational land under section 1 of chapter 61B.

Added by St.1973, c. 1118, § 1. Amended by St.1975, c. 794, §§ 4 to 6; St.2006, c. 394, §§ 26 to 28, eff. Mar. 22, 2007.

§ 13. Change of use; liability for roll-back taxes

Whenever land which is valued, assessed and taxed under this chapter no longer meets the definition of land actively devoted to agricultural, horticultural or agricultural and horticultural use, it shall be subject to additional taxes, in this section called roll-back taxes, in the current tax year in which it is disqualified and in those years of the 4 immediately preceding tax years in which the land was so valued, assessed and taxed, but roll-back taxes shall not apply unless the amount of those taxes as computed under this section, exceeds the amount, if any, imposed under section 12 and, in that case, the land shall not be subject to the conveyance tax imposed under said section 12. For each tax year, the roll-back tax shall be an amount equal to the difference, if any, between the taxes paid or payable for that tax year in accordance with this chapter and the taxes that would have been paid or payable in that tax year had the land been valued, assessed and taxed without regard to those provisions. If, at the time during a tax year when a change in land use has occurred, the land was not then valued, assessed and taxed under the provisions of this chapter, then such land shall be subject to roll-back taxes only for such of the five immediately preceding years in which the land was valued, assessed and taxed thereunder. In determining the amount of roll-back taxes on land which has undergone a change in use, the board of assessors shall have ascertained the following for each of the roll-back tax years involved:

(a) The full and fair value of such land under the valuation standard applicable to other land in the city or town;

(b) The amount of the land assessment for the particular tax year;

(c) The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under subsection (a); and,

(d) The amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under subsection (c) by the general property tax rate of the city or town applicable for that tax year.

Roll-back taxes will be subject to a simple interest rate of 5 per cent per annum. Land which is valued, assessed and taxed under this chapter as of July 1, 2006 shall be exempt from any interest if it remains in the same ownership as it was on that date or under the ownership of the original owner's spouse, parent, grandparent, child, grandchild, brother, sister or surviving spouse of any deceased such relative.

If the board of assessors determines that the total amount of roll-back taxes to be assessed under this section, before the addition of any interest, as provided for in the preceding paragraph, would be less than $10, no tax shall be assessed.

No roll-back tax imposed by this section will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or recreational land under section 1 of chapter 61B.

Land retained as open space as required for the mitigation of development shall be subject to the roll-back taxes imposed by this section.

Added by St.1973, c. 1118, § 1. Amended by St.1975, c. 794, § 7; St.2006, c. 394, §§ 29, 30, eff. Mar. 22, 2007.

§ 14. Sale for or conversion to residential or commercial use; notice of intent to city or town; option to purchase; assignment of option

Land taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed or within 1 year after that time unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use.

The discontinuance of forest certification shall not, in itself, for the purposes of this section, be considered a conversion. Specific use of land for a residence for the owner, the owner's spouse or a parent, grandparent, child, grandchild, or brother or sister of the owner, or surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full-time in the agricultural or horticultural use of such land, shall not be a conversion for the purposes of this section, and a certificate of the board of assessors, recorded with the registry of deeds, shall conclusively establish that particular use.

Any notice of intent to sell for other use shall be accompanied by a statement of intent to sell, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner.

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter, and which shall be a bona fide offer as described below.

Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

Any notice of intent to convert to other use shall be accompanied by a statement of intent to convert, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, the name, address and telephone number of the landowner and the landowner's attorney, if any.

The notice of intent to sell or convert shall be sent by the landowner by certified mail or hand delivered to the mayor and city council of a city, or board of selectmen of a town, and in the case of either a city or a town, to its board of assessors, to its planning board and conservation commission, if any, and to the state forester.

A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell or convert shall be conclusive evidence that the landowner has mailed the notice in the manner and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to which it relates.

The notice of intent to sell or convert shall be considered to have been duly mailed if addressed to the mayor and city council or board of selectmen in care of the city or town clerk; to the planning board and conservation commission if addressed to them directly; to the state forester if addressed to the commissioner of the department of conservation and recreation; and to the assessors if addressed to them directly.

If the notice of intent to sell or convert does not contain all of the material described above, then the town or city, within 30 days after receipt, shall notify the landowner in writing that notice is insufficient and does not comply.

For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.

In the case of intended or determined conversion not involving sale, the municipality shall have an option to purchase the land at full and fair market value to be determined by an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee, the original appraisal to be completed and delivered to

the landowner within 30 days after the notice of conversion to the municipality. In the event that the landowner is dissatisfied with the original appraisal, the landowner may, at the landowner's expense, contract for a second appraisal, to be completed within 60 days after the delivery of the notice to convert. If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties will contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of conversion to the municipality and shall be the final determination of consideration. Upon agreement of a consideration, the city or town shall then have 120 days to exercise its option. During the appraisal process, the landowner may revoke the intent to convert at any time and with no recourse to either party.

The option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at the address that is specified in the notice of intent. Notice of public hearing shall be given in accordance with section 23B of chapter 39.

The notice of exercise shall also be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice to the landowner of the city or town's election to exercise its option shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the mayor or board of selectmen, or upon expiration of any extended period that the landowner has agreed to in writing, whichever is later.

At the public hearing or a further public hearing, the city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under the terms and conditions that the mayor or board of selectmen may consider appropriate. Notice of public hearing shall be given in accordance with section 23B of chapter 39.

The assignment shall be for the purpose of maintaining no less than 70 per cent of the land in use as forest land as defined in section 1, as agricultural and horticultural land as defined in sections 1 and 2 of chapter 61A or as recreation land as defined in section 1 of chapter 61B, and in no case shall the assignee develop a greater proportion of the land than was proposed by the developer whose offer gave rise to the assignment. All land other than land that is to be developed shall then be bound by a permanent deed restriction that meets the requirements of chapter 184.

If the first refusal option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions as provided in this section, the mayor or board of selectmen shall provide written notice of assignment to the landowner.

The notice of assignment shall state the name and address of the organization or agency of the commonwealth which will exercise the option in addition to the terms and conditions of the assignment. The notice of assignment shall be recorded with the registry of deeds.

Failure to record either the notice of exercise or the notice of assignment within the 120 day period shall be conclusive evidence that the city or town has not exercised its option.

If the option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions, the option may be exercised by the assignee only by written notice to the landowner signed by the assignee, mailed to the landowner by certified mail at the address that is specified in the notice of intent. The notice of exercise shall also be recorded with the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice of exercise to the landowner shall be accompanied by a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended period the landowner has agreed to in writing, from the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the assignee.

During the 120 day period, the city or town or its assignees, shall have the right, at reasonable times and upon reasonable notice, to enter upon the land for the purpose of surveying and inspecting the land, including, but not limited to, soil testing for

purposes of Title V and the taking of water samples.

The city or town or its assignee shall have all rights assigned to the buyer in the purchase and sale agreement contained in the notice of intent.

If the city or town elects not to exercise the option, and not to assign its right to exercise the option, the city or town shall send written notice of nonexercise, signed by the mayor or board of selectmen, to the landowner by certified mail at the address that is specified in the notice of intent. The notice of nonexercise shall contain the name of the owner of record of the land and description of the premises adequate for identification of them and shall be recorded with the registry of deeds.

No sale or conversion of the land shall be consummated until the option period has expired or the notice of nonexercise has been recorded with the registry of deeds, and no sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided in this section.

This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the sale to the parties in the manner described in this section for notice of intent to sell or convert, and the giving of notice may be established by an affidavit as described in this section.

Added by St.1973, c. 1118, § 1. Amended by St.1975, c. 794, §§ 8, 9; St.1986, c. 330, §§ 1, 2; St.1987, c. 95, §§ 3, 4; St.2006, c. 394, § 31, eff. Mar. 22, 2007; St.2008, c. 312, § 6, eff. Aug. 14, 2008.

§ 15. Taxation of buildings and land occupied by dwelling

All buildings located on land which is valued, assessed and taxed on the basis of its agricultural or horticultural uses in accordance with the provisions of this chapter and all land occupied by a dwelling or regularly used for family living shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable property.

Added by St.1973, c. 1118, § 1.

§ 16. Continuance of land valuation, assessment and taxation under this chapter dependent upon qualifying use

Continuance of land valuation, assessment and taxation under the provisions of this chapter shall depend upon continuance of such land in agricultural or horticultural uses and compliance with other requirements of this chapter and not upon continuance in the same owner of title to such land. Liability to roll-back taxes, determined pursuant to section thirteen, shall attach when such land no longer qualifies as actively devoted to agricultural or horticultural use and shall be the obligation of the then owner of the land. For purposes relating to roll-back taxes such qualification shall depend on the actual use of such land for the previous 5 years, and not on the filing of application under section six for any year.

Added by St.1973, c. 1118, § 1. Amended by St.1975, c. 794, § 10; St.2006, c. 394, § 32, eff. Mar. 22, 2007.

§ 17. Separation of land to other use; liability for conveyance or roll-back taxes; continuing qualification of remainder

If, by conveyance or other action of the owner thereof, a portion of land which is valued, assessed and taxed under the provisions of this chapter is separated for a use other than agricultural or horticultural, the land so separated shall be subject to liability for conveyance or roll-back taxes applicable thereto, but such separation shall not impair the right of the remainder of such land to continuance of valuation, assessment and taxation thereunder; provided, that such remaining land continues to qualify under the usage, minimum acreage and other provisions thereof.

Added by St.1973, c. 1118, § 1.

§ 18. Special or betterment assessments; payment; interest

Land qualifying for valuation, assessment and taxation under this chapter shall be subject to special assessments or betterment assessments to such pro rata extent as the service or facility financed by such assessment is used for improving the agricultural or horticultural use capability of said land or for the personal benefit of the owner thereof. Any such assessment shall, however, upon application, be suspended during the time the land is in agricultural or horticultural use and shall become due and payable as of the date when the use of such land is changed. In the event only a portion of a tract of land which benefits from a suspension of payment is changed from such use, the assessment shall become due and payable as of the date when the use was changed only to the extent of and in the proportion that the frontage of such portion bears to the street frontage of the

entire tract of land which originally benefited from a suspension of payment. Upon full payment of a portion of a suspended assessment, the tax collector may dissolve the lien for the assessment insofar as it affects the portion of the land changed from agricultural or horticultural use. The lien for the portion of the original assessment which remains unpaid shall continue and remain in full force and effect until dissolved in accordance with law. A request for such release shall be made in writing to the tax collector, and shall be accompanied by a plan and such other information as is required in the case of a request for a division of an assessment pursuant to section fifteen.

Payment of the assessment and interest on it shall be made in accordance with section 13 of chapter 80, but any interest shall be computed from the date of the change in use.

Added by St.1973, c. 1118, § 1. Amended by St.1978, c. 382, § 2; St.2006, c. 394, §§ 33 to 36, eff. Mar. 22, 2007.

§ 19. Roll-back taxes; procedures for assessment; appeal to appellate tax board

The assessment, collection, apportionment and payment over of the roll-back taxes imposed by section thirteen shall be governed by the procedures provided for the assessment and taxation of omitted property under section seventy-five of chapter fifty-nine. Such procedures shall apply to each tax year for which roll-back taxes may be imposed notwithstanding the limitation set forth in said chapter fifty-nine with respect to the periods for which omitted property assessments may be imposed. Any person aggrieved by any determination or assessment by the board of assessors under this chapter may within 30 days of the date of notice thereof apply in writing to the assessors for modification or abatement thereof. Any person aggrieved by the refusal of the assessors to modify such a determination or make such an abatement or by their failure to act upon such an application may appeal to the appellate tax board within thirty days after the date of notice of their decision or within three months of the date of the application, whichever date is later. It shall be a condition of such appeal with respect to the annual general property tax that the asserted tax be paid, but no payment shall be required as a condition of such appeal with respect to any asserted conveyance tax or roll-back tax. If any payment of any tax imposed by this chapter should be made and as the result of any such modification or abatement by the board of assessors or decision by the appellate tax board it shall appear that any such tax has been overpaid, such excess payment shall be reimbursed by the town treasurer with interest at the rate of six per cent per annum from time of payment. Collection of any conveyance or roll back taxes, by sale or taking or otherwise, may be stayed by the appellate tax board while any such appeal is pending. Any partial payment of the asserted tax that may be required by the appellate tax board in connection with such stay shall not exceed one half of the asserted tax.

Added by St.1973, c. 1118, § 1. Amended by St.1975, c. 794, § 11; St.2006, c. 394, § 37, eff. Mar. 22, 2007.

§ 19A. Sale of land; certification of taxes paid or payable

In connection with any proposed or completed sale or other transfer of any land which has been valued, assessed and taxed under the provisions of this chapter, the owner of record of the land may apply to the board of assessors for a certificate of the amount of conveyance tax and roll-back tax, if any, payable by reason of such sale or other transfer, or that no such tax will or has so become payable and stating the amount of any conveyance or roll-back taxes that have theretofore become payable with respect to such land; and such a certificate shall be provided to the applicant within twenty days after application therefor. Such certificate may be recorded with the registry of deeds; and upon recording of such a certificate that no such tax will or has so become payable, or a certificate by the collector of taxes that the amount of tax stated in such certificate of the board of assessors has been paid, all liens on such land for taxes under this chapter shall terminate, except that any liens for any roll-back taxes assessed by reason of such land ceasing to qualify for valuation, assessment and taxation under this chapter after the date of such sale or other transfer, shall continue. In connection with the issuance of such a certificate, the board of assessors may rely upon their own records, affidavits and such other information as they may deem appropriate. The board of assessors shall charge six dollars for each certificate so issued, and the money so received shall be paid into the town treasury.

Added by St.1975, c. 794, § 12.

§ 20. Valuation and assessment for purposes other than provisions of this chapter; equalization

For any purpose, other than the provisions of this chapter, for which the assessed value of land is

relevant, including exemptions under the provisions of chapter fifty-nine, land qualifying for taxation under this chapter shall be valued and deemed to have been assessed by the same standards, methods and procedures as other taxable property.

In determining the equalization required by section nine of chapter fifty-eight, the commissioner of revenue shall determine the value of such land on the basis of its agricultural and horticultural use.

Added by St.1973, c. 1118, § 1. Amended by St.1978, c. 514, § 92.

§ 21. Factual details on tax list

The factual details to be shown on the tax list of a board of assessors with respect to land which is valued, assessed and taxed under this chapter shall be the same as those set forth by said board with respect to other taxable property in the same city or town.

Added by St.1973, c. 1118, § 1.

§ 22. Rules and regulations; forms and procedures

The commissioner of revenue shall promulgate such rules and regulations and shall prescribe the use of such forms and procedures as he deems appropriate to and consistent with effectuation of the purposes of this chapter.

Added by St.1973, c. 1118, § 1. Amended by St.1978, c. 514, § 93.

§ 23. Use of valuation, etc. procedures to evade taxes; penalties

Any person using the valuation, assessment and taxation procedures set forth in this chapter for the purposes of evading payment of full and proper taxes shall be subject to a fine of not more than ten thousand dollars or imprisonment for one year or both and to payment to the city or town in which the land is located of an amount equal to three times the amount of taxes so evaded.

Added by St.1973, c. 1118, § 1.

§ 24. Severability

If any clause, sentence, subdivision, paragraph, section or part of this act be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part thereof directly involved in the controversy in which said judgment shall have been rendered.

Added by St.1973, c. 1118, § 1.

CHAPTER 61B

CLASSIFICATION AND TAXATION OF RECREATIONAL LAND

Chapter 61B of the General Laws was added by St.1979, c. 713, § 1.

Section
1. Recreational land and uses.
2. Value of recreational land; rate of tax.
2A. Tax rate for recreational land.
3. Eligibility for classification as recreational.
4. Changes in use; valuation; additional assessments.
5. Revaluation programs; time for application for recreational classification.
6. Allowance or disallowance of applications; time; records; liens.
7. Land sold for other uses; conveyance tax; nonexempt transfers.
8. Disqualification of land; roll-back taxes.
9. Notice of intent to sell for or convert to other use; option of first refusal; assignment of option.
10. Buildings on recreational land; land occupied by dwellings or used for family living; taxation.
11. Continuance of classification.
12. Separation of land for non-recreational use.
13. Special or betterment assessments.
14. Roll-back taxes; procedures for assessment, etc.; modification or abatement; appeals.
15. Certificate of amount of conveyance or roll-back tax.
16. Equalized valuation based on recreational use.
17. Tax list of board of assessors; information required.
18. Rules and regulations; forms and procedures.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Recreational land and uses

Land not less than five acres in area shall be deemed to be recreational land if it is retained in substantially a natural, wild, or open condition or in a landscaped or pasture condition or in a managed forest condition under a certified forest management plan approved by and subject to procedures established by the state forester in such a manner as to allow to a significant extent the preservation of wildlife and other natural resources, including but not limited to, ground or surface water resources, clean air, vegetation, rare or endangered species, geologic features, high quality soils, and scenic resources. Land not less than five acres in area shall also be deemed to be recreational land which is devoted primarily to recreational use and which does not materially interfere with the environmental benefits which are derived from said land, and is available to the general public or to members of a non-profit organization including a corporation organized under chapter one hundred and eighty.

For the purpose of this chapter, the term recreational use shall be limited to the following: hiking, camping, nature study and observation, boating, golfing, non-commercial youth soccer, horseback riding, hunting, fishing, skiing, swimming, picnicking, private non-commercial flying, including hang gliding, archery, target shooting and commercial horseback riding and equine boarding.

Such recreational use shall not include horse racing, dog racing, or any sport normally undertaken in a stadium, gymnasium or similar structure.

Added by St.1979, c. 713, § 1. Amended by St.1998, c. 194, § 120; St.2006, c. 394, §§ 38, 39, eff. Mar. 22, 2007.

§ 2. Value of recreational land; rate of tax

The value of land classified under the provisions of this chapter shall be determined under section thirty-eight of chapter fifty-nine solely on the basis of its use. The board of assessors shall assess such land at valuations based upon the guidelines established under the provisions of chapter fifty-eight, but in no event shall such valuation exceed twenty-five per cent of its fair cash value as determined pursuant to chapter fifty-nine.

The rate of tax applicable to such recreational land shall be the rate determined to be applicable to class three, commercial property under chapter fifty-nine.

Added by St.1979, c. 713, § 1. Amended by St.1980, c. 261, § 19.

§ 2A. Tax rate for recreational land

In a city or town that accepts this section, the rate of tax applicable to recreational land shall be the rate determined to be applicable to class two, open space.

Added by St.2006, c. 394, § 40, eff. Mar. 22, 2007.

§ 3. Eligibility for classification as recreational

Eligibility of land for valuation, assessment and taxation under this chapter shall be determined

separately for each tax year. Application therefor shall be submitted to the board of assessors of each city or town in which such land is situated not later than October first of the year preceding each tax year for which such valuation, assessment and taxation is being sought. Application shall be made on a form prescribed by the commissioner of revenue and provided for the use of applicants by said board of assessors. Such form shall provide for the reporting of information pertinent to the provisions of this chapter and for certification by the applicant that he will immediately notify the board of assessors in writing of any subsequent circumstance within his control or knowledge which may cause a change in use of the land covered by such form prior to October first next following. Any application submitted under this section and covering leased land shall be accompanied by a written statement signed by the lessee of his intent to use such land for the purposes set forth in said application. A certification by a landowner that the information set forth in his application is true may be prescribed by said commissioner to be in lieu of a sworn statement to that effect. An application so certified shall be considered as if made under oath and subject to the same penalties as provided by law for perjury.

Added by St.1979, c. 713, § 1.

§ 4. Changes in use; valuation; additional assessments

If a change in use of land maintained as recreational land as defined in section one occurs between October first and June thirtieth of the year preceding the tax year, the board of assessors shall disallow or nullify the application filed under authority of section three, and, after examination and inquiry, shall determine the full and fair value of said land under the valuation standard applicable to other land and shall assess the same according to such value. If, notwithstanding such change of use, the land is valued, assessed and taxed under the provisions of this chapter in the ensuing year, upon notice thereof said board shall enter an assessment and the amount of the increased tax resulting from such assessment, as an added assessment and tax against such land, for the particular year involved in the manner prescribed in section seventy-five of chapter fifty-nine. The amount of the added assessment shall be equal to the difference, if any, between the assessment imposed under this chapter and the assessment which would have been imposed had the land been valued and assessed as other land. The enforcement and collection of additional taxes resulting from any additional assessment so imposed shall be as provided by said chapters fifty-nine and sixty.

Added by St.1979, c. 713, § 1. Amended by St.2006, c. 394, § 41, eff. Mar. 22, 2007.

§ 5. Revaluation programs; time for application for recreational classification

In any city or town in which a program of revaluation of all property therein has been or shall be undertaken and completed in time to be reflected in the assessments for the next succeeding tax year but not in sufficient time to permit landowners to make application prior to October first of the year preceding the tax year for the valuation, assessment and taxation of their lands for the ensuing tax year on the basis of being maintained in recreational use, any such application filed with the board of assessors after October first and not more than thirty days following the mailing of the tax bill containing the new valuation shall be deemed to have been timely made for the tax year of the revaluation program, notwithstanding any provision of this chapter to the contrary. If such application is approved and the lands qualify for valuation, assessment and taxation as lands maintained for recreational use in the ensuing tax year, the portion of any tax assessed for such year which is in excess of the tax which would have been assessed on such lands had such application been timely made and approved shall be abated.

Added by St.1979, c. 713, § 1.

§ 6. Allowance or disallowance of applications; time; records; liens

An application for valuation, assessment and taxation of land under the provisions of this chapter shall be allowed or disallowed by the board of assessors of the city or town in which such land is located within three months of the filing thereof. An application for valuation, assessment and taxation of land under the provisions of this chapter shall be disallowed by the board of assessors of the city or town in which such land is located if, in their judgment such land, in whole or in part, does not qualify thereunder. If any board of assessors shall determine that any such application is submitted for the purpose of evading payment of full and proper taxes, such board shall disallow such application. The failure of a board of assessors to allow or disallow any such application within three months following the filing thereof, shall be

deemed a disallowance of such application. The board of assessors shall, within ten days of an allowance, or disallowance, send written notice of such allowance, or disallowance, by certified mail to the applicant and shall set forth therein the reason or reasons for disallowance together with a statement advising the applicant of his right to appeal therefrom as provided in section fourteen. In the case of a partial disallowance, the applicant shall be permitted to file an amendment to the original application.

With respect to the first application relating to a parcel of land which has been approved, and any subsequent such applications after a lapse of time when such land has not been valued, assessed and taxed under this chapter or after a change of record ownership of such land, the board of assessors shall forthwith cause to be recorded in the registry of deeds of the county or district in which the city or town is situated a statement of their action which shall constitute a lien upon the land covered by such application for such taxes as may be levied under the provisions of this chapter. The statement shall name the owner or owners of record and shall include a description of the land adequate for identification. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. Upon application of any record owner, such liens shall be released by the board of assessors with respect to any parcel of land as hereinafter provided upon the applicable facts being established by records, affidavits or otherwise.

All liens for conveyance tax under section seven shall be released upon its being established that no conveyance or change of use by the owner at the time of such release will result in a conveyance tax under said section seven or that any such taxes which have become due have been paid.

All liens for roll-back taxes under section eight, other than roll-back taxes based on change of use after the date of such release, shall be released upon its being so established that no roll-back taxes have become due or that any such taxes which have become due have been paid.

The board of assessors shall also have the power and authority to release any such liens to correct any errors or omissions. Any release under this section shall be recorded with the registry of deeds.

When any land which has been valued, assessed and taxed under this chapter ceases to be so valued, assessed and taxed the board of assessors shall forthwith record in the said registry of deeds a statement to that effect which shall include the name of the record owner or owners, the date when such land ceased to be so valued, assessed and taxed and a description of the land adequate for identification.

All recording fees paid under this chapter whether for statements of liens, certificates, releases or otherwise shall be borne by the owner of record of the land.

Added by St.1979, c. 713, § 1. Amended by St.2006, c. 394, § 42, eff. Mar. 22, 2007.

§ 7. Land sold for other uses; conveyance tax; nonexempt transfers

Any recreational land which is valued, assessed and taxed under the provisions of this chapter, if sold for other use within a period of ten years from the beginning of the fiscal year in which it was first so classified shall be subject to a conveyance tax applicable to the total sales price of such land, which tax shall be in addition to such taxes as may be imposed under any other provision of law. Said conveyance tax shall be at the following rate: ten per cent if sold within the first five years of its being first so classified; and, five per cent if sold within the sixth through tenth year of its being first so classified. No conveyance tax shall be imposed under the provisions of this section following the end of the tenth year of its being first so classified. The conveyance tax shall be due and payable by the grantor at the time of transfer of the property by deed or other instrument of conveyance and shall be payable to the tax collector of the city or town in which the property is entered upon the tax list. In the case of taking by eminent domain, the value of the property taken shall be determined in accordance with chapter 79, and the amount of conveyance tax, if any, shall be added as an added value. If there is filed with the board of assessors an affidavit by the purchaser that the land is being purchased for recreational use, no conveyance tax shall be payable by the seller by reason of the sale, but if the land is not continued in that use for at least 5 consecutive years, the purchaser shall be liable for any conveyance tax that would have been payable on the sale as a sale for other use. The conveyance tax shall be assessed only on the portion of land whose use has changed. Notwithstanding the foregoing provisions, no conveyance tax shall be assessed if the land involved, or a lesser interest in the land, is acquired for a natural

resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold for or converted to commercial, residential, or industrial use within 5 years of acquisition by a nonprofit conservation organization, the conveyance tax shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had such transaction been subject to a conveyance tax. The conveyance tax shall be assessed only on the portion of land whose use has changed.

Except with respect to eminent domain takings, this section shall not apply to the following: mortgage deeds; deeds to or by the city or town in which the land is located; deeds which correct, modify, supplement or confirm a deed previously recorded; deeds between husband and wife and parent and child when no consideration is received; tax deeds; deeds releasing any property which is a security for a debt or other obligation; deeds for division of property between owners without monetary consideration; foreclosures of mortgages and conveyances by the foreclosing parties; deeds made pursuant to a merger of a corporation or by a subsidiary corporation to a parent corporation for no consideration other than cancellation and surrender of capital stock of the subsidiary which do not change beneficial ownership; and property transferred by devise or other as a result of death. A nonexempt transfer subsequent to any exempt transfer or transfers shall be subject to the provisions of this section. Upon such nonexempt transfer the date of acquisition by the grantor, for purposes of this section, shall be deemed to be the date of the last preceding transfer not excluded by the foregoing provisions from application of this section; except that in the case of transfer by a grantor who has acquired the property from a foreclosing mortgagee the date of acquisition shall be deemed to be the date of such acquisition. If any tax imposed under this section should not be paid, the collector of taxes shall have the same powers and be subject to the same duties with respect to such taxes as in the case of the annual taxes upon real estate. The law in regard to the collection of the annual taxes, to the sale of land for the nonpayment thereof and to redemption therefrom shall apply to such taxes, so far as the same are applicable. Any classified recreational land which is valued, assessed and taxed under the provisions of this chapter, if changed by the owner thereof to another use within a period of ten years from the date of its classification for recreational use by said owner, shall be subject to the conveyance tax applicable hereunder at the time of such change in use as if there had been an actual conveyance, and the value of such land for the purpose of determining a total sales price shall be fair market value as determined by the board of assessors of the city or town involved for all other property.

Notwithstanding this section, no conveyance tax imposed by this section will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or the definition of agricultural land under sections 1 and 3 of chapter 61A or the definition of horticultural land under sections 2 and 3 of chapter 61A.

Added by St.1979, c. 713, § 1. Amended by St.1980, c. 261, §§ 20, 20A; St.2006, c. 394, §§ 43 to 45, eff. Mar. 22, 2007.

§ 8. Disqualification of land; roll-back taxes

Whenever land which is valued, assessed and taxed under this chapter no longer meets the definition of recreational use, it shall be subject to additional taxes, in this section called roll-back taxes, in the current tax year in which it is disqualified and in each of the 4 immediately preceding tax years in which the land was so valued, assessed and taxed, but the roll-back taxes shall not apply unless the amount of the taxes, as computed under this section, exceeds the amount, if any, imposed under section 7 and, in that case, the land shall not be subject to the conveyance tax imposed under said section 7. For each tax year, the roll-back tax shall be equal to the difference, if any, between the taxes paid or payable for that tax year in accordance with this chapter and the taxes that would have been paid or payable had the land been valued, assessed and taxed without regard to these provisions. Notwithstanding the foregoing provisions, no roll-back taxes shall be assessed if the land involved, or a lesser interest in the land, is acquired for a natural resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold or converted to commercial, residential, or industrial use within 5 years after acquisition by a nonprofit conservation organization, roll-back taxes shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the

time of acquisition of the subject parcel by the nonprofit conservation organization had the transaction been subject to a roll-back tax. If, at the time during a tax year when a change in land use has occurred, the land was not then valued, assessed and taxed under the provisions of this chapter, then such land shall be subject to roll-back taxes only for such of the ten immediately preceding years in which the land was valued, assessed and taxed thereunder. In determining the amount of roll-back taxes on land which has undergone a change in use, the board of assessors shall have ascertained the following for each of the roll-back tax years involved:

(a) the full and fair value of such land under the valuation standard applicable to other land in the city or town;

(b) the amount of the land assessment for the particular tax year;

(c) the amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under clause (a); and,

(d) the amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under clause (c) by the general property tax rate of the city or town applicable for that tax year.

Interest on roll-back taxes shall be payable and shall be computed as simple interest at 5 per cent per annum. If the board of assessors determines that the total amount of the roll-back taxes to be assessed under this section, before the addition of any interest as provided for in the preceding paragraph, would be less than $10, no tax shall be assessed.

No roll-back tax imposed by this section will be assessed on land that meets the definition of forest land under section 1 of chapter 61, agricultural land under sections 1 and 3 of chapter 61A, or horticultural land under sections 2 and 3 of chapter 61A.

Land retained as open space as required for the mitigation of a development shall be subject to the roll-back taxes imposed by this section.

Added by St.1979, c. 713, § 1. Amended by St.2006, c. 394, §§ 46, 47, eff. Mar. 22, 2007.

§ 9. Notice of intent to sell for or convert to other use; option of first refusal; assignment of option

Land taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed or within 1 year after that time unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use.

The discontinuance of forest certification shall not, in itself, for the purposes of this section, be considered a conversion. Specific use of land for a residence for the owner, the owner's spouse or a parent, grandparent, child, grandchild, or brother or sister of the owner, or surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full-time in the use and care of such land for recreational purposes, shall not be a conversion for the purposes of this section, and a certificate of the board of assessors, recorded with the registry of deeds, shall conclusively establish that particular use.

Any notice of intent to sell for such other use shall be accompanied by a statement of intent to sell, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner.

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter, and which shall be a bona fide offer as described below.

Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by

a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

Any notice of intent to convert to other use shall be accompanied by a statement of intent to convert, a statement of proposed use of such land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, the name, address and telephone number of the landowner and the landowner's attorney, if any.

The notice of intent to sell or convert shall be sent by the landowner by certified mail or hand delivered to the mayor and city council of a city, or board of selectmen of a town, and in the case of either a city or a town, to its board of assessors, to its planning board and conservation commission, if any, and to the state forester.

A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell or convert shall be conclusive evidence that the landowner has mailed the notice in the manner and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to which it relates.

The notice of intent to sell or convert shall be considered to have been duly mailed if addressed to the mayor and city council or board of selectmen in care of the city or town clerk; to the planning board and conservation commission if addressed to them directly; to the state forester if addressed to the commissioner of the department of conservation and recreation and to the assessors if addressed to them directly.

If the notice of intent to sell or convert does not contain all of the material as described above, then the town or city, within 30 days after receipt, shall notify the landowner in writing that notice is insufficient and does not comply.

For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.

In the case of intended or determined conversion not involving sale, the municipality shall have an option to purchase the land at full and fair market value to be determined by an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee, the original appraisal to be completed and delivered to the landowner within 30 days after the notice of conversion to the municipality. In the event that the landowner is dissatisfied with the original appraisal, the landowner may, at the landowner's expense contract for a second appraisal, to be completed within 60 days after the delivery of the notice to convert. If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties will contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of conversion to the municipality and shall be the final determination of consideration. Upon agreement of a consideration, the city or town shall then have 120 days to exercise its option. During the appraisal process, the landowner may revoke the intent to convert at any time and with no recourse to either party.

The option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at the address that is specified in the notice of intent. Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

The notice of exercise shall also be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice to the landowner of the city or town's election to exercise its option shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the mayor or board of selectmen, or upon expiration of any extended period that the landowner has agreed to in writing, whichever is later.

At the public hearing or a further public hearing, the city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under the terms and conditions that the mayor or board of selectmen may consider appropriate. Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

The assignment shall be for the purpose of maintaining no less than 70 per cent of the land in use as forest land as defined in section 1 of this chap-

ter, as agricultural and horticultural land as defined in sections 1 and 2 of chapter 61A or as recreation land as defined in section 1 of chapter 61B, and in no case shall the assignee develop a greater proportion of the land than was proposed by the developer whose offer gave rise to the assignment. All land other than land that is to be developed shall then be bound by a permanent deed restriction that meets the requirements of chapter 184.

If the first refusal option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions as provided in this section, the mayor or board of selectmen shall provide written notice of assignment to the landowner.

The notice of assignment shall state the name and address of the organization or agency of the commonwealth which will exercise the option in addition to the terms and conditions of the assignment. The notice of assignment shall be recorded with the registry of deeds.

Failure to record either the notice of exercise or the notice of assignment within the 120 day period shall be conclusive evidence that the city or town has not exercised its option.

If the option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions, the option may be exercised by the assignee only by written notice to the landowner signed by the assignee, mailed to the landowner by certified mail at the address that is specified in the notice of intent.

The notice of exercise shall also be recorded with the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice of exercise to the landowner shall be accompanied by a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended period that the landowner has agreed to in writing, from the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the assignee.

During the 120 day period, the city or town or its assignees, shall have the right, at reasonable times and upon reasonable notice, to enter upon the land for the purpose of surveying and inspecting said land, including but not limited to soil testing for purposes of Title V and the taking of water samples.

The city or town or its assignee shall have all rights assigned to the buyer in the purchase and sales agreement contained in the notice of intent.

If the city or town elects not to exercise the option, and not to assign its right to exercise the option, the city or town shall send written notice of nonexercise signed by the mayor or board of selectmen to the landowner by certified mail at the address that is specified in the notice of intent. The notice of nonexercise shall contain the name of the owner of record of the land and description of the premises adequate for identification of them, and shall be recorded with the registry of deeds.

No sale or conversion of the land shall be consummated until the option period has expired or the notice of nonexercise has been recorded with the registry of deeds, and no sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided herein.

This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the sale to the parties in the manner described in this section for notice of intent to sell or convert, and the giving of that notice may be established by an affidavit as described in this section.

Added by St.1979, c. 713, § 1. Amended by St.1987, c. 95, §§ 5, 6; St.1987, c. 142, §§ 3, 4; St.2006, c. 394, § 48, eff. Mar. 22, 2007; St.2008, c. 312, § 7, eff. Aug. 14, 2008.

§ 10. Buildings on recreational land; land occupied by dwellings or used for family living; taxation

All building[1] located on land which is valued, assessed and taxed on the basis of its recreational use in accordance with the provisions of this chapter and all land occupied by a dwelling or regularly used for family living shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable property.

Added by St.1979, c. 713, § 1.

[1] So in original.

§ 11. Continuance of classification

Continuance of land valuation, assessment and taxation under the provisions of this chapter shall depend upon continuance of such land in recreational use and compliance with other requirements of this chapter and not upon continuance in the same owner of title to such land. Liability to roll-back taxes, determined pursuant to section eight shall attach when such land no longer qualifies as recreational land actively and shall be the obligation of the then owner of the land. For purposes relating to roll-back taxes such qualification shall depend on the actual use of such land for the previous 5 years, and not on the filing of application under section three for any year.

Added by St.1979, c. 713, § 1. Amended by St.2006, c. 394, § 49, eff. Mar. 22, 2007.

§ 12. Separation of land for non-recreational use

If, by conveyance or other action of the owner thereof, a portion of land which is valued, assessed and taxed under the provisions of this chapter is separated for a use which does not qualify as recreational land, the land so separated shall be subject to liability for conveyance or roll-back taxes applicable thereto, but such separation shall not impair the right of the remainder of such land to continuance of valuation, assessment and taxation thereunder; provided, however, that such remaining land continues to so qualify.

Added by St.1979, c. 713, § 1.

§ 13. Special or betterment assessments

Land qualifying for valuation, assessment and taxation under this chapter shall be subject to special assessments or betterment assessments to such pro rata extent as the service or facility financed by such assessment is used for improving the recreational use capability of said land or for the personal benefit of the owner thereof. This assessment shall, however, upon application, be suspended during the time the land is in classified recreational use and shall become due and payable as of the date when the use of the land is changed. Payment of the assessment and interest on it shall be made in accordance with section 13 of chapter 80, but the interest shall be computed from the date of the change in use. If only a portion of a tract of land which benefits from a suspension of payment is changed from that use, the assessment shall become due and payable as of the date when the use was changed only to the extent of and in the proportion that the frontage of that portion bears to the street frontage of the entire tract of land which originally benefited from a suspension of payment. Upon receipt of full payment of a portion of a suspended assessment, the tax collector shall dissolve the lien for the assessment insofar as it affects the portion of the land changed from recreational use. The lien for the portion of the original assessment which remains unpaid shall continue and remain in full force and effect until dissolved in accordance with law. A request for this release shall be made in writing to the tax collector and shall be accompanied by a plan and other information that is required in the case of a request for a division of an assessment under section 10.

Added by St.1979, c. 713, § 1. Amended by St.2006, c. 394, § 50, eff. Mar. 22, 2007.

§ 14. Roll-back taxes; procedures for assessment, etc.; modification or abatement; appeals

The assessment, collection, apportionment and payment over of the roll-back taxes imposed by section eight shall be governed by the procedures provided for the assessment and taxation of omitted property under section seventy-five of chapter fifty-nine. Such procedures shall apply to each tax year for which roll-back taxes may be imposed notwithstanding the limitation set forth in said chapter fifty-nine with respect to the periods for which omitted property assessments may be imposed. Any person aggrieved by any determination or assessment by the board of assessors under this chapter may within sixty days of the date of notice thereof apply in writing to the assessors for modification or abatement thereof. Any person aggrieved by the refusal of the assessors to modify such a determination or make such an abatement or by their failure to act upon such an application may appeal to the appellate tax board within thirty days after the date of notice of their decision or within three months of the date of the application, whichever date is later. It shall be a condition of such appeal with respect to the annual general property tax that the asserted tax be paid, but no payment shall be required as a condition of such appeal with respect to any asserted conveyance tax or roll-back tax. If any payment of any tax imposed by this chapter should be made and as the result of any such modification or abatement by the board of assessors or decision by the appellate tax board it shall appear that any such tax has been overpaid,

such excess payment shall be reimbursed by the town treasurer with interest at the rate of six per cent per annum from time of payment. Collection of any conveyance or roll-back taxes, by sale or taking or otherwise, may be stayed by the appellate tax board while any such appeal is pending. Any partial payment of the asserted tax that may be required by the appellate tax board in connection with such tax shall not exceed one-half of the asserted tax.

Added by St.1979, c. 713, § 1.

§ 15. Certificate of amount of conveyance or roll-back tax

In connection with any proposed or completed sale or other transfer of any land which has been valued, assessed and taxed under the provisions of this chapter, the owner of record of the land may apply to the board of assessors for a certificate of the amount of conveyance tax and roll-back tax, if any, payable by reason of such sale or other transfer, or that no such tax is payable and stating the amount of any conveyance or roll-back taxes that are payable with respect to such land. Such certificate shall be provided to the applicant within twenty days after application therefor. Such certificate may be recorded with the registry of deeds, and upon such recording of such a certificate become payable, or a certificate by the collector of taxes that the amount of tax stated in such certificate of the board of assessors has been paid, all liens on such land for taxes under this chapter shall terminate, except that any liens for any roll-back taxes assessed by reason of land ceasing to qualify for valuation, assessment and taxation under this chapter after the date of such sale or other transfer, shall continue. In connection with the issuance of such a certificate, the board of assessors may rely upon their own records, affidavits and such other information as they may deem appropriate. The board of assessors shall charge six dollars for each certificate so issued, and the money so received shall be paid into the town treasury.

Added by St.1979, c. 713, § 1.

§ 16. Equalized valuation based on recreational use

In determining the equalization required by section nine of chapter fifty-eight, the commissioner of revenue shall determine the value of such land on the basis of its recreational use.

Added by St.1979, c. 713, § 1. Amended by St.1980, c. 261, § 21.

§ 17. Tax list of board of assessors; information required

The factual details to be shown on the tax list of a board of assessors with respect to land which is valued, assessed and taxed under this chapter shall be the same as those set forth by said board with respect to other taxable property in the same city or town.

Added by St.1979, c. 713, § 1.

§ 18. Rules and regulations; forms and procedures

The commissioner of revenue shall promulgate such rules and regulations and shall prescribe the use of such forms and procedures as he deems appropriate to and consistent with effectuation of the purposes of this chapter.

Added by St.1979, c. 713, § 1.

CHAPTER 64G

ROOM OCCUPANCY EXCISE

Chapter 64G of the General Laws was added by St.1966, c. 14, § 25.

Selected section

Section
3A. Local excise tax; information concerning amount collected available.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 3A. Local excise tax; information concerning amount collected available

Any city or town which accepts the provisions of this section shall be authorized to impose a local excise tax upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house or motel located within such city or town by any operator at a rate up to, but not exceeding, 6 per cent of the total amount of rent for each such occupancy; provided, however, that the city of Boston is hereby authorized to impose such local excise upon the transfer of occupancy of any room in a bed and breakfast establishment, hotel, lodging house or motel located within said city by any operator at the rate of up to but not exceeding 6.5 per cent of the total amount of rent of each such occupancy. No excise shall be imposed if the total amount of rent is less than fifteen dollars per day or its equivalent or if the accommodation is exempt under the provisions of section two of this chapter. The operator shall pay the local excise tax imposed under the provisions of this section to the commissioner at the same time and in the same manner as the excise tax due the commonwealth. All sums received by the commissioner under this section as excise, penalties or forfeitures, interest, costs of suit and fines shall at least quarterly be distributed, credited and paid by the state treasurer upon certification of the commissioner to each city or town that has adopted the provisions of this section in proportion to the amount of such sums received from the transfer of occupancy in each such city or town. This section shall only take effect in a city or town accepting the provisions of this section by a majority vote of the city council with the approval of the mayor, in the case of a city with a Plan A, Plan B, or Plan F charter; by a majority vote of the city council, in the case of a city with a Plan C, Plan D, or Plan E charter; by a majority vote of the annual town meeting or a special meeting called for the purpose, in the case of a municipality with a town meeting form of government; or by a majority vote of the town council, in the case of a municipality with a town council form of government. The provisions of this section shall take effect on the first day of the calendar quarter following thirty days after such acceptance, or on the first day of such later calendar quarter as the city or town may designate. The city or town, in accepting the provisions of this section, may not revoke or otherwise amend the applicable local tax rate more often than once in any twelve month period.

The commissioner of the department of revenue shall make available to any city or town requesting such information the total amount of room occupancy tax collected in the preceding fiscal year in the city or town requesting the information.

Added by St.1985, c. 145, § 6. Amended by St.1986, c. 423, § 2; St.1988, c. 31, § 4; St.1992, c. 133, § 416; St.1997, c. 152, § 22; St.2009, c. 27, §§ 51, 52, eff. Aug. 1, 2009.

CHAPTER 64L

LOCAL OPTION MEALS EXCISE

Chapter 64L of the General Laws was added by St.2009, c. 27, § 60.

Section

1. Definitions.
2. Local sales tax upon restaurant meals; distribution; effective date upon acceptance by municipality; reports.
3. Sourcing meal sales to business location of vendor; vendors with multiple business locations; meal delivery companies and caterers.
4. Reimbursement to vendor by purchaser.
5. Tax to be stated and charged separately by vendor; sale of alcoholic beverages consumed on premises.
6. Liability for failure to pay tax under this chapter.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Definitions

As used in this chapter, the following words shall have the meaning assigned to them in paragraph (h) of section 6 of chapter 64H: "honor snack tray", "meals" and "restaurant".

"Commissioner", the commissioner of revenue.

"Sale", a sale of meals by a restaurant for any purpose other than resale in the regular course of business.

"Vendor", shall have the meaning assigned to it in section 1 of chapter 64H.

Added by St.2009, c. 27, § 60, eff. Oct. 1, 2009.

§ 2. Local sales tax upon restaurant meals; distribution; effective date upon acceptance by municipality; reports

(a) A city or town which accepts this section in the manner provided in section 4 of chapter 4 may impose a local sales tax upon the sale of restaurant meals originating within the city or town by a vendor at a rate of .75 per cent of the gross receipts of the vendor from the sale of restaurant meals. No excise shall be imposed if the sale is exempt under section 6 of chapter 64H. The vendor shall pay the local sales tax imposed under this section to the commissioner at the same time and in the same manner as the sales tax due to the commonwealth.

(b) All sums received by the commissioner under this section shall, at least quarterly, be distributed, credited and paid by the state treasurer upon certification of the commissioner to each city or town that has accepted this section in proportion to the amount of the sums received from the sales of restaurant meals in that city or town. Any city or town seeking to dispute the commissioner's calculation of its distribution under this subsection shall notify the commissioner, in writing, not later than 1 year from the date the tax was distributed by the commissioner to the city or town.

(c) This section shall take effect in a municipality on the first day of the calendar quarter following 30 days after its acceptance by the municipality or on the first day of a later calendar quarter that the city or town may designate.

(d) Notwithstanding any provisions in section 21 of chapter 62C to the contrary, the commissioner may make available to cities and towns any information necessary for administration of the excise imposed by this section including, but not limited to, a report of the amount of local option sales tax on restaurant meals collected in the aggregate by each city or town under this section in the preceding fiscal year, and the identification of each individual vendor collecting local option sales tax on restaurant meals collected under this chapter.

Added by St.2009, c. 27, § 60, eff. Oct. 1, 2009.

§ 3. Sourcing meal sales to business location of vendor; vendors with multiple business locations; meal delivery companies and caterers

Except as provided herein, a sale of a meal by a restaurant is sourced to the business location of the vendor if (1) the meal is received by the purchaser at the business location of the vendor or (2) if the meal is delivered by the vendor to a customer, regardless of the location of the customer. A vendor with multiple business locations in the commonwealth must separately report sales sourced to each location in a manner prescribed by the commissioner. Restaurant meal delivery companies that purchase meals for resale must source their sales to the delivery location indicated by instructions for delivery to the purchaser and shall separately report sales by municipality in a manner prescribed by the commissioner. The commission-

er may also adopt by rule or regulation destination sourcing and reporting rules for caterers or other vendors with a high volume of delivered meals, as the commissioner may determine, in order to mitigate any anti-competitive impact of the local meals tax.

Added by St.2009, c. 27, § 60, eff. Oct. 1, 2009.

§ 4. Reimbursement to vendor by purchaser

Reimbursement for the tax imposed by this chapter shall be paid by the purchaser to the vendor, and each vendor in the commonwealth shall add to the sales price and shall collect from the purchaser the full amount of the tax imposed by this chapter and such tax shall be a debt from the purchaser to the vendor, when so added to the sales price, and shall be recoverable at law in the same manner as other debts.

Added by St.2009, c. 27, § 60, eff. Oct. 1, 2009.

§ 5. Tax to be stated and charged separately by vendor; sale of alcoholic beverages consumed on premises

Upon each sale of a meal by a restaurant taxable under this chapter, the amount of tax collected by the vendor from the purchaser shall be stated and charged separately from the sales price and shown separately on any record thereof at the time the sale is made or on any evidence of sale issued or used by the vendor, but in the instance of the sale of alcoholic beverages for on premises consumption, the tax collected need not be stated separately.

Added by St.2009, c. 27, § 60, eff. Oct. 1, 2009.

§ 6. Liability for failure to pay tax under this chapter

Every person who fails to pay to the commissioner any sums required by this chapter shall be personally and individually liable therefor to the commonwealth. The term "person", as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership or limited liability company, who as an officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

Added by St.2009, c. 27, § 60, eff. Oct. 1, 2009.

CHAPTER 66

PUBLIC RECORDS

Selected sections

Section

6. Records of public proceedings; preparation; custody.
8. Preservation and destruction of records, books and papers.
10. Public inspection and copies of records; presumption; exceptions.
13. Custodian to demand records; compelling compliance.

The section headings for the General Laws in this pamphlet have been editorially supplied

§ 6. Records of public proceedings; preparation; custody

Every department, board, commission or office of the commonwealth or of a county, city or town, for which no clerk is otherwise provided by law, shall designate some person as clerk, who shall enter all its votes, orders and proceedings in books and shall have the custody of such books, and the department, board, commission or office shall designate an employee or employees to have the custody of its other public records. Every sole officer in charge of a department or office of the commonwealth or of a county, city or town having public records in such department or office shall have the custody thereof.

Historical and Statutory Notes

St.1897, c. 439, §§ 2, 3.
R.L.1902, c. 35, § 11.

§ 8. Preservation and destruction of records, books and papers

Every original paper belonging to the files of the commonwealth or of any county, city or town, bearing date earlier than the year eighteen hundred and seventy, every book of registry or record, except books which the supervisor of public records determines may be destroyed, every town warrant, every deed to the commonwealth or to any county, city or town, every report of an agent, officer or committee relative to bridges, public ways, sewers or other state, county or municipal interests not required to be recorded in a book and not so recorded, shall be preserved and safely kept; and every other paper belonging to such files shall be kept for seven years after the latest original entry therein or thereon, unless otherwise provided by law or unless such records are included in disposal schedules approved by the records conservation board for state records or by the supervisor of public records for county, city, or town records; and no such paper shall be destroyed without the written approval of the supervisor of records. Notwithstanding the foregoing, the register of deeds in any county may, without such written approval, destroy any papers pertaining to attachments or to the dissolution or discharge thereof in the files of his office following the expiration of twenty years after the latest original entry therein or thereon, unless otherwise specifically provided by law, and he may destroy all original instruments left for record and not called for within five years after the recording thereof.

Amended by St.1943, c. 128; St.1949, c. 395, § 2; St.1962, c. 427, § 3; St.1974, c. 141.

Historical and Statutory Notes

St.1894, c. 356, §§ 1, 2.
St.1897, c. 439, § 4.
R.L.1902, c. 35, § 14.
St.1918, c. 257, § 167.
St.1919, c. 5.
St.1920, c. 2.

§ 10. Public inspection and copies of records; presumption; exceptions

(a) Every person having custody of any public record, as defined in clause Twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expense of such search. The following fees shall apply to any public record in the custody of the state police, the Massachusetts bay transportation authority police or any municipal police department or fire department: for preparing and mailing a motor vehicle accident report, five dollars for not more than six pages and fifty cents for each additional page; for preparing and mailing a fire insurance report, five dollars for not more than

six pages plus fifty cents for each additional page; for preparing and mailing crime, incident or miscellaneous reports, one dollar per page; for furnishing any public record, in hand, to a person requesting such records, fifty cents per page. A page shall be defined as one side of an eight and one-half inch by eleven inch sheet of paper.

(b) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records may notify the attorney general or the appropriate district attorney thereof who may take whatever measures he deems necessary to insure compliance with the provisions of this section. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance.

(c) In any court proceeding pursuant to paragraph (b) there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(d) The clerk of every city or town shall post, in a conspicuous place in the city or town hall in the vicinity of the clerk's office, a brief printed statement that any citizen may, at his discretion, obtain copies of certain public records from local officials for a fee as provided for in this chapter.

The commissioner of the department of criminal justice information services, the department of criminal justice information services and its agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, department of children and families, department of correction and any other public safety and criminal justice system personnel, and of unelected general court personnel, shall not be public records in the custody of the employers of such personnel or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed, but such information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180 or to a criminal justice agency as defined in section 167 of chapter 6. The name and home address and telephone number of a family member of any such personnel shall not be public records in the custody of the employers of the foregoing persons or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed. The home address and telephone number or place of employment or education of victims of adjudicated crimes, of victims of domestic violence and of persons providing or training in family planning services and the name and home address and telephone number, or place of employment or education of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying such persons as falling within such categories and shall not be disclosed.

Amended by St.1948, c. 550, § 5; St.1973, c. 1050, § 3; St.1976, c. 438, § 2; St.1978, c. 294; St.1982, c. 189, § 1; St.1982, c. 477; St.1983, c. 15; St.1991, c. 412, § 55; St.1992, c. 286, § 146; St.1996, c. 39, § 1; St.1996, c. 151, § 210; St.1998, c. 238; St.2000, c. 159, § 133; St.2004, c. 149, § 124, eff. July 1, 2004; St.2008, c. 176, § 61, eff. July 8, 2008; St.2010, c. 256, §§ 58, 59, eff. Nov. 4, 2010.

Historical and Statutory Notes

St.1851, c. 161, § 4.
St.1857, c. 84, § 3.
G.S.1860, c. 29, § 10.
P.S.1882, c. 37, § 13.
St.1897, c. 439, § 7.
R.L.1902, c. 35, § 17.

§ 13. Custodian to demand records; compelling compliance

Whoever is entitled to the custody of public records shall demand the same from any person having possession of them, who shall forthwith deliver the same to him. Upon complaint of any public officer entitled to the custody of a public record, the superior court shall have jurisdiction in equity to compel any person unlawfully having such record in his possession to deliver the same to the complainant.

Amended by St.1951, c. 200.

Historical and Statutory Notes

St.1897, c. 439, § 9.
R.L.1902, c. 35, § 20.

CHAPTER 70

SCHOOL FUNDS AND STATE AID FOR PUBLIC SCHOOLS

Section

1. Legislative intent.
2. Definitions.
3. Foundation budget; regulations; calculation of budget.
3A. Data necessary to generate required minimum local contribution and state aid components; house and senate committees on ways and means; bi-monthly updates.
4. Foundation budget review commission; membership; recommendations.
5. Municipalities receiving overburden aid; reductions.
6. Contributions by municipalities for support of local schools and school district.
7. Reductions in amount appropriated.
8. Districts' methods for allocating appropriated funds; under-performing districts; restrictions.
9. Reports on amounts spent for certain expenses.
10. Aid paid to municipalities and districts; amounts.
11. Excess funds; application to following fiscal year.
12. Determination of amounts appropriated.
13. Allocation of funds.
14. Exemption of certain districts from chapter.
15. Applicability of chapter.

The section headings for the General Laws in this pamphlet have been editorially supplied

St.1948, c. 643, § 1, amended the General Laws by striking out former Chapter 70 consisting of §§ 1 to 18, and by inserting in place thereof a new Chapter 70 consisting of §§ 1 to 11.

St.1966, c. 14, § 40 amended the General Laws by striking out former Chapter 70 consisting of §§ 1 to 11, and by inserting in place thereof a new Chapter 70 consisting of §§ 1 to 7. St.1966, c. 14, was submitted to the voters by referendum and approved by them at the general election on Nov. 8, 1966.

St.1978, c. 367, § 70C, as amended by St.1980, c. 261, § 35, amended the General Laws by striking out former Chapter 70 consisting of §§ 1 to 7, and by inserting in place thereof a new Chapter 70 consisting of §§ 1 to 11.

DISPOSITION TABLE

Showing where the subject matter of Chapter 70, as added by St.1978, c. 367, § 70B, as amended, consisting of §§ 1 to 11, and stricken out by St.1993, c. 71, § 32, can be found in new §§ 1 to 15 enacted thereby.

Former Sections	New Sections
1	1
2	2
2A	—
3	3, 10
4	9
5	—
6	3, 12
7	6
8	11
9	—
10	—
11	10

§ 1. Legislative intent

It is the intention of the general court, subject to appropriation, to assure fair and adequate minimum per student funding for public schools in the commonwealth by defining a foundation budget and a standard of local funding effort applicable to every city and town in the commonwealth.

Added by St.1993, c. 71, § 32.

§ 2. Definitions

As used in this chapter and in chapters fifteen, sixty-nine and seventy-one, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

"Adjusted property valuation", the equalized property valuation of the municipality multiplied by the most recent average annual per capita income for the municipality, divided by the average annual per capita income for the commonwealth for the same period, as reported by the United States bureau of census.

"Assumed tuitioned-out special education enrollment", one percent of the total foundation enrollment in a district, not counting vocational or preschool enrollment.

"Assumed in-school special education enrollment", 3.75 per cent of total foundation enrollment in a district not counting vocational or preschool

enrollment, plus 4.75 per cent of vocational enrollment.

"Base aid", in any fiscal year, the total of base aid, minimum aid and foundation aid of the previous fiscal year. In fiscal year nineteen hundred and ninety-four, base aid shall be state school aid in fiscal year nineteen hundred and ninety-three; provided, however, that the amount of aid deemed to have been distributed in fiscal year nineteen hundred and ninety-three pursuant to section sixteen D of chapter seventy-one shall be adjusted to equal the amount that would have been distributed in fiscal year nineteen hundred and ninety-four in accordance with paragraph (e) of section sixteen D of said chapter seventy-one but for the provisions of this chapter and paragraph (f) of said section sixteen D of chapter seventy-one; and provided, further, that, for any district in which net school spending is less than the foundation budget in determining base aid in the current fiscal year, the base aid amount of the previous fiscal year shall be adjusted by adding any amount that will be deducted in the current fiscal year pursuant to the provisions of section twelve B of chapter seventy-six for students that applied and were accepted at receiving districts during the prior fiscal year; provided, however, that the students identified in subsection (m) of said section twelve B, shall be deemed for the purposes of this calculation to have been accepted at receiving districts during fiscal year nineteen hundred and ninety-three.

"Base year foundation budget", the sum of foundation base year payroll, foundation non-salary base year expenses, the professional development allotment, expanded program allotment, extraordinary maintenance allotment, and book and equipment allotment. The base year foundation is the foundation budget for fiscal year nineteen hundred and ninety-three.

"Board", the board of education.

"Book and equipment allotment", the amounts allotted within a district's foundation budget for books and equipment in any fiscal year. The book and equipment allotment shall be the sum of:

(a) one hundred and twenty-five dollars multiplied by the sum of the foundation kindergarten enrollment and the foundation pre-school enrollment; plus

(b) two hundred and fifty dollars multiplied by the sum of the foundation elementary enrollment, the foundation bilingual enrollment and the foundation junior high/middle school enrollment; plus

(c) four hundred dollars multiplied by the foundation high school enrollment; plus

(d) seven hundred dollars multiplied by the foundation vocational enrollment; plus

(e) two hundred dollars multiplied by the assumed in-school special education enrollment.

"Commissioner", the commissioner of the department of education within the executive office of education.

"Department", the department of education within the executive office of education.

"District" or "School district", the school department of a city or town, and a regional school district.

"Enrollment categories", each student, including students enrolled in special education programs, and students attending a school in another district, pursuant to the provisions of section twelve B of chapter seventy-six, who resides in the district and who attends either a public school in that district or a school for which the district of residence pays tuition, shall be placed in one and only one of the following enrollment categories depending on the grade and program to which the student is assigned:

(A) "Bilingual enrollment", the number of students enrolled in English language learners programs established under chapter 71A but, in the case of an innovative program, only the limited English proficient students enrolled in such program shall be considered in calculating bilingual enrollment in a district.

(B) "Elementary enrollment", number of students enrolled in grades one through five and not enrolled in bilingual or vocational programs in a district.

(C) "High school enrollment", the number of students enrolled in grades nine through twelve and not enrolled in bilingual or vocational programs in a district.

(D) "Junior high/middle school enrollment", the number of students enrolled in grades six through eight and not enrolled in bilingual or vocational programs in a district.

(E) "Kindergarten enrollment", the number of students enrolled in kindergarten and not enrolled in bilingual or vocational programs in a district;

provided, however, that in any district in which kindergarten students attend school for a full day, the foundation kindergarten enrollment used to calculate the foundation budget amount described in this section shall be two times the kindergarten enrollment number that would otherwise be used for said calculations if said district and all towns responsible for appropriating for said district so request.

(F) "Pre-school enrollment", the number of students enrolled in pre-school programs run in connection with the special education program in a district. The foundation pre-school enrollment may not exceed twice the number of pre-school students enrolled under approved individual education plans.

(G) "Vocational enrollment", the number of students enrolled in vocational and occupational education programs or an agricultural school in a district.

"Equalized property valuation", the annual equalized property valuation for a municipality as determined by the department of revenue pursuant to the provisions of sections nine, ten and ten C of chapter fifty-eight.

"Equity aid", aid amounts payable to municipalities in any fiscal year equal to the equity gap multiplied by the foundation aid percent.

"Equity gap", the positive difference, if any, between (1) the positive difference, if any between the preliminary local contribution and the gross standard of effort and (2) the positive difference, if any, between the sum of the preliminary local contribution, base aid, minimum aid and federal impact aid and the foundation budget amount. The equity gap shall be defined separately for each municipality's share of each district of which it is a member.

"Excess debt service amount", shall be the difference, if any, between (i) the municipality's share of long-term debt service in support of school construction and (ii) the statewide average of local share of long-term debt service in support of school construction, on a per pupil basis, multiplied by the foundation number of pupils in the town. For regional school districts, the excess debt service amount shall be allocated amongst member municipalities according to the provisions of the regional school district agreement. The excess debt service amount for a municipality shall be the sum of the municipality's share of excess debt service amounts for all of the regional districts of which it is a member.

"Expanded program allotment", the amount allotted within a district's foundation budget for providing expanded educational services for low-income students. The expanded program allotment shall be determined by multiplying the number of low-income elementary and middle school students in a district by the wage adjustment factor by three hundred and eighty dollars.

"Extraordinary maintenance allotment", the amount allotted within a district's foundation budget for extraordinary maintenance costs in any fiscal year. The extraordinary maintenance allotment shall be two thousand, two hundred dollars multiplied by the sum of the foundation teaching staff and the foundation support staff.

"Foundation aid", aid amounts payable to municipalities in any fiscal year equal to the foundation gap multiplied by the statewide foundation aid percent.

"Foundation aid percent", the result of dividing (1) the difference between the amount appropriated for the implementation of this chapter and the sum of the total base aid and total minimum aid by (2) the sum of the statewide foundation gap, the state overburden obligation, and the statewide equity gaps.

"Foundation assistants", the number of school assistants or aides allotted within a district's foundation budget in any fiscal year. The number of foundation assistants shall be the sum of:

(a) six thousandths multiplied by the sum of the foundation kindergarten enrollment and the foundation pre-school enrollment; plus

(b) twelve thousandths multiplied by the sum of the foundation elementary enrollment and the foundation bilingual enrollment; plus

(c) two thousandths multiplied by the foundation junior high/middle school enrollment; plus

(d) eight ten-thousandths multiplied by the sum of the foundation high school enrollment and the foundation vocational enrollment; plus

(e) one hundred and twenty-five thousandths multiplied by the assumed in-school special education enrollment.

"Foundation athletic expenses", the amount allotted within a district's foundation budget for athletic expenses in any fiscal year. The foundation athletic expenses shall be the sum of:

(a) fifty dollars multiplied by the foundation junior high/middle school enrollment; plus

(b) two hundred dollars multiplied by the sum of the foundation high school enrollment and the foundation vocational enrollment.

"Foundation benefits", the amount allotted within a district's foundation budget for the purchase of employee benefits and other insurance in any fiscal year. The foundation benefits shall be the sum of the following:

(a) four thousand three hundred and twenty dollars multiplied by the wage adjustment factor multiplied by the sum of the foundation teaching staff, the foundation support staff, the foundation assistants, the foundation principals, the foundation clerical staff, the foundation health care staff, the foundation central office professional staff and the foundation custodial staff; plus

(b) four hundred and sixty dollars multiplied by the sum of the foundation teaching staff, the foundation support staff, the foundation assistants, the foundation principals, the foundation clerical staff, the foundation health care staff, the foundation central office professional staff and the foundation custodial staff; plus

(c) two hundred and thirty dollars multiplied by the foundation vocational staff.

"Foundation budget", the sum of the foundation payroll, foundation non-salary expenses, professional development allotment, expanded program allotment, extraordinary maintenance allotment, and book and equipment allotment. The base year for calculating the foundation budget shall be fiscal year nineteen hundred and ninety-three. The base year foundation budget shall be calculated according to the formulas in this section using foundation enrollment as described in this section. For fiscal years thereafter, the foundation budget shall be the base year foundation budget, as adjusted for enrollment and for inflation as set forth in section three of this chapter.

"Foundation central office professional staff", the number of professional staff allotted within a district's foundation budget in any fiscal year for central office duties. The foundation central office professional staff shall be the sum of:

(a) two thousandths multiplied by the total foundation enrollment; plus

(b) fifteen thousandths multiplied by the sum of assumed in-school special education enrollment and assumed tuitioned-out special education enrollment; plus

(c) twenty-five hundred-thousandths multiplied by the foundation vocational enrollment.

"Foundation clerical staff", the number of staff allotted within a district's foundation budget in any fiscal year for clerical duties. The foundation clerical staff shall be the sum of:

(a) two hundred and seventy-five hundred-thousandths multiplied by the sum of the foundation kindergarten enrollment and the foundation pre-school enrollment; plus

(b) fifty-five ten-thousandths multiplied by the sum of the foundation elementary enrollment, the foundation bilingual enrollment, the foundation junior high/middle school enrollment, the foundation high school enrollment and the foundation vocational enrollment; plus

(c) two hundredths multiplied by the sum of the assumed in-school special education enrollment and the assumed tuitioned-out special education enrollment.

"Foundation custodial staff", the number of staff allotted within a district's foundation budget in any fiscal year for custodial duties. The foundation custodial staff shall be one-tenth multiplied by the sum of the foundation teaching staff and the foundation support staff.

"Foundation enrollment", the student enrollment of a district in any fiscal year. The foundation enrollment is defined as the sum of foundation elementary, junior high, senior high, bilingual, and vocational enrollment plus one-half the sum of foundation pre-school and kindergarten enrollment, including students enrolled in the program for the elimination of racial imbalance. By March first of each calendar year, the department shall certify the foundation enrollment for the next fiscal year as the actual enrollment as reported the previous October.

"Foundation extracurricular activity expenses", the amount allotted within a district's foundation budget for extracurricular activity expenses in any fiscal year. The foundation extracurricular activity expenses shall be the sum of:

(a) twenty-five dollars multiplied by the sum of the foundation elementary enrollment and the foundation bilingual enrollment; plus

(b) thirty-five dollars multiplied by the foundation junior high/middle school enrollment; plus

(c) forty-five dollars multiplied by the sum of the foundation high school enrollment and the foundation vocational enrollment.

"Foundation gap", the positive difference, if any, between (i) the foundation budget in any fiscal year and (ii) the sum of base aid, school choice reimbursement as defined in section twelve B of chapter seventy-six, federal impact aid, and the larger of (1) the prior year local contribution or (2) the standard of effort for that fiscal year. The foundation gap shall be calculated separately for each municipality's share of each district to which it belongs.

"Foundation health care staff", the number of staff allotted within a district's foundation budget to perform health care related duties in any fiscal year. The foundation health care staff shall be the sum of:

(a) one thousandths multiplied by the sum of the foundation kindergarten enrollment and the foundation pre-school enrollment; plus

(b) two thousandths multiplied by the sum of the foundation elementary enrollment and the foundation bilingual enrollment; plus

(c) fifteen ten-thousandths multiplied by the sum of the foundation junior high/middle school enrollment, the foundation high school enrollment and the foundation vocational enrollment.

"Foundation inflation index", in fiscal year 2003, the foundation inflation index shall equal 1.256286153. In fiscal year 2004 and in each fiscal year thereafter, the foundation inflation index shall equal the prior year's foundation inflation index multiplied by the minimum of (a) the ratio of the value of the implicit price deflator for state and local government purchases in the first quarter of the prior fiscal year to its value in the first quarter of the year 2 years prior, and (b) 1.045.

"Foundation miscellaneous expenses", the amount allotted within a district's foundation budget for miscellaneous activity expenses in any fiscal year. The foundation miscellaneous activity expenses shall be the sum of:

(a) four hundred dollars multiplied by the assumed in-school special education enrollment; plus

(b) seventy-five dollars multiplied by the total foundation enrollment; plus

(c) eleven hundred dollars multiplied by the foundation clerical staff.

"Foundation non-salary expenses", the sum of foundation athletic expenses, foundation extracurricular activity expenses, foundation utility and ordinary maintenance expenses, foundation benefits, foundation special education tuition, and foundation miscellaneous expenses.

"Foundation payroll", the amount allotted within a district's foundation budget for the teaching staff, support staff, assistants, principals, clerical staff, health care staff, central office professional staff, and custodial staff in any fiscal year. The foundation payroll shall be the wage adjustment factor multiplied by the sum of:

(a) thirty-eight thousand dollars multiplied by the sum of the foundation teaching staff and the foundation support staff; plus

(b) nine thousand dollars multiplied by the foundation assistants; plus

(c) sixty-two thousand dollars multiplied by the sum of (i) foundation principals, and (ii) one and fifteen-hundredths multiplied by the foundation central office professional staff; plus

(d) eighteen thousand five hundred dollars multiplied by the foundation clerical staff; plus

(e) twenty-five thousand dollars multiplied by the foundation health care staff; plus

(f) twenty-five thousand dollars multiplied by the foundation custodial staff.

"Foundation principals", the number of principals allotted within a district's foundation budget in any fiscal year. The foundation principals shall be the sum of:

(a) fifteen ten-thousandths multiplied by the sum of the foundation kindergarten enrollment and foundation pre-school enrollment; plus

(b) three thousandths multiplied by the sum of the foundation elementary enrollment and the foundation bilingual enrollment; plus

(c) thirty-five ten-thousandths multiplied by the foundation junior high/middle school enrollment; plus

(d) thirty-five ten-thousandths multiplied by the sum of the foundation high school enrollment and the foundation vocational enrollment.

"Foundation special education tuition", the amount allotted within a district's foundation budget for special education tuition in any fiscal year. The value shall be the product of thirteen thousand

five hundred dollars and the assumed tuitioned-out special education enrollment.

"Foundation support staff", the number of staff allotted within a district's foundation budget for support duties in any fiscal year. The foundation support staff shall be the sum of:

(a) seven hundred and twenty-five hundred-thousandths multiplied by the sum of the foundation kindergarten enrollment and the foundation pre-school enrollment; plus

(b) one hundred and forty-five ten-thousandths multiplied by the sum of the foundation elementary enrollment and the foundation bilingual enrollment; plus

(c) twenty-five thousandths multiplied by the foundation junior high/middle school enrollment; plus

(d) forty-two ten-thousandths multiplied by the sum of the foundation high school enrollment and the foundation vocational enrollment; plus

(e) seventy-six thousandths multiplied by the assumed in-school special education enrollment.

"Foundation teaching staff", the number of staff allotted within a district's foundation budget for teaching duties in any fiscal year. The foundation teaching staff, calculated using enrollments as defined in this section, shall be the sum of the following:

(a) the sum of the foundation kindergarten enrollment and the foundation pre-school enrollment divided by forty-four; plus

(b) the foundation elementary enrollment divided by twenty-two; plus

(c) the foundation junior high/middle school enrollment divided by twenty-five; plus

(d) the foundation high school enrollment divided by seventeen; plus

(e) the foundation bilingual enrollment divided by fifteen; plus

(f) the foundation vocational enrollment divided by ten; plus

(g) the assumed in-school special education enrollment divided by eight; plus

(h) three hundredths multiplied by the average number of low-income students attending schools in the district over the preceding two fiscal years.

"Foundation utility and ordinary maintenance expenses", the amount allotted within a district's foundation budget for utility and ordinary maintenance costs in any fiscal year. The foundation utility and ordinary maintenance expenses shall be three thousand three hundred dollars multiplied by the sum of:

(a) the sum of the foundation teaching staff and the foundation support staff; plus

(b) the foundation vocational enrollment divided by thirty.

"Foundation vocational staff", the number of teachers, support staff principals, clerical staff, health care staff and custodial staff assigned to a vocational school or program or an agricultural school allotted within a district's foundation budget in any fiscal year.

"General revenue sharing aid", the amount of assistance from the commonwealth to be received by a city or town in a fiscal year from the following local aid programs: (1) payments in lieu of taxes for state-owned lands distributed pursuant to section seventeen of chapter fifty-eight, (2) equity aid as defined in this section, (3) the distribution to cities and towns of the balance of the State Lottery Fund in accordance with the provisions of clause (c) of section thirty-five of chapter ten, and (4) additional assistance, so-called, as distributed pursuant to section eighteen E of chapter fifty-eight.

"Gross overburden amounts", are as follows: for municipalities with an adjusted property valuation per pupil of equal to or less than ninety-five percent of the statewide average, the gross overburden amount shall be one hundred percent of the standard of effort gap. For municipalities with an adjusted property valuation per pupil greater than ninety-five percent of the state average but less than one hundred and twenty percent of the state average, the gross overburden amount shall be the standard of effort gap multiplied by the positive difference between one and ninety-five one hundredths and the ratio of the municipality's adjusted property valuation per pupil to the amount of the state average adjusted property valuation per pupil. For municipalities with an adjusted property valuation per pupil equal to or greater than one hundred and twenty percent of the state average, the gross overburden amount shall be zero; provided further, that for any municipality in which the average per capita income is below the state average per capita income, the gross overburden amount shall be one hundred percent of the standard of effort gap.

"Gross standard of effort", for a municipality in fiscal year nineteen hundred and ninety-four shall be ninety-four ten-thousandths times the adjusted property valuation, calculated using the nineteen hundred and ninety-two equalized property valuations as published by the department of revenue. In subsequent fiscal years, the gross standard of effort shall be the gross standard of effort of the previous fiscal year, increased by a percentage equal to the municipal revenue growth factor.

"Local contribution", the net school spending of a municipality in any fiscal year minus the sum of state school aid and federal impact aid, less equity aid, for that fiscal year as projected by the department of education; provided, however, in any city or town that deferred a portion of its teachers' salaries in the fiscal year ending June thirtieth, nineteen hundred and ninety-three or that had its regional school assessment reduced as a result of a deferral of teachers' salaries in a regional school district in said fiscal year, the local contribution for said fiscal year shall be reduced by the amount of such teachers' salary deferral and reduced regional school assessment, if any. The department shall publish tables allotting each municipality's local contribution in fiscal year nineteen hundred and ninety-three amongst the districts to which the municipality belongs.

"Low-income enrollment", the number of children attending school in a district regardless of residence or tuition-paying status, who are eligible for free or reduced cost lunches under eligibility guidelines promulgated by the federal government under 42 USC 1758. A low-income child or student is a child who meets these eligibility standards. In determining the total number of low-income students, the department shall use the preceding year's actual number of low-income elementary, middle school, high school, bilingual, and vocational students, and one-half the preceding year's actual number of low-income kindergarten and pre-school students.

"Minimum aid", the amount of minimum state school aid available to a municipality in any fiscal year, which shall be fifty dollars multiplied by the district foundation enrollment in fiscal year nineteen hundred and ninety-four, and twenty-five dollars multiplied by the district foundation enrollment every year thereafter until fiscal year two thousand and one.

"Minimum required local contribution", the sum of (1) the preliminary local contribution, and (2) the foundation aid percent multiplied by the standard of effort gap in any fiscal year. This sum shall be reduced by the overburden aid amount, if any, and the excess debt service amount, if any; provided, however, that in no case shall said reduction result in a reduction of net school spending to an amount less than the foundation budget amount. The minimum required local contribution shall be defined separately for each municipality's share of each district to which it belongs.

"Municipal revenue growth factor", the change in local general revenues calculated by subtracting one from the quotient calculated by dividing the sum of (1) the maximum levy for the fiscal year estimated by multiplying the levy limit of the prior fiscal year by a factor equal to one hundred two and one-half percent plus the average of the percentage increases in the levy limit due to new growth adjustments over the last three available years as certified by the department of revenue or as otherwise estimated by the division of local services of the department of revenue where it appears that a municipality may not be entitled to increase its minimum levy limit by two and one-half percent; provided, however, that if the highest percentage during such three years exceeds the average of the other two years' percentages by more than two percentage points, then the lowest three of the last four years shall be used for such calculation; (2) the amount of general revenue sharing aid for the fiscal year; and (3) other budgeted recurring receipts not including user fees or other charges determined by said division of local services to be associated with the provision of specific municipal services for the prior fiscal year, by the sum of (1) the actual levy limit for the prior fiscal year; (2) the amount of general revenue sharing aid received for the prior fiscal year; and (3) other recurring receipts not including user fees or other charges determined by such division of municipal services to be associated with the provision of specific municipal services budgeted by the municipality for the fiscal year preceding the prior fiscal year, if any; provided, however, that for the purposes of this calculation, the levy limit shall exclude any amounts generated by overrides applicable to any year after the fiscal year ending June thirtieth, nineteen hundred and ninety-three; provided, further, that in the absence of an actual levy limit for the prior fiscal year, the actual levy limit for the prior fiscal year shall be estimated by multiplying the actual levy limit of the fiscal year preceding the prior fiscal year by a factor equal to one

hundred two and one-half percent plus the average of the percentage increases in the levy limit due to new growth as specified above; provided, further, that such factor shall not be greater than the factor determined by subtracting one from the quotient calculated by dividing total state school aid for the current fiscal year by total state school aid for the prior fiscal year; and, provided, further, that in making any of the calculations required by this definition, said division of local services may substitute more current information or such other information as would produce a more accurate estimate of the change in a municipality's general local revenues and the department shall use such growth factor to calculate preliminary contribution, minimum contribution and any other factor that directly or indirectly uses the municipal growth factor.

"Net school spending", the total amount spent for the support of public education, including teacher salary deferrals and tuition payments for children residing in the district who attend a school in another district or other approved facility, determined without regard to whether such amounts are regularly charged to school or non-school accounts by the municipality for accounting purposes; provided, however, that net school spending shall not include any spending for long term debt service, and shall not include spending for school lunches, or student transportation. Net school spending shall also not include tuition revenue or revenue from activity, admission, other charges or any other revenue attributable to public education. Such revenue will be made available to the school district which generated such revenue in addition to any financial resources made available by municipalities or state assistance. The department of education, in consultation with the department of revenue shall promulgate regulations to ensure a uniform method of determining which municipal expenditures are appropriated for the support of public education and which revenues are attributable to public education in accordance with this section. The regulations shall include provisions for resolving disputes which may arise between municipal and school officials.

"Overburden aid", for each municipality is the gross overburden amount for that municipality multiplied by the foundation aid percent.

"Preliminary local contribution", the product of (a) the minimum required local contribution of the prior fiscal year, and (b) one plus the municipal revenue growth factor, which product shall be increased by the excess debt service amount of the prior fiscal year if said amount was used to reduce the minimum required local contribution in the prior fiscal year; provided, that said preliminary local contribution shall not be greater than the gross standard of effort amount; provided, further, that for any district in which net school spending is less than the foundation budget amount and the prior year local contribution is greater than the gross standard of effort amount, the preliminary local contribution shall not be less than the fiscal year nineteen hundred and ninety-three local contribution, except that said contribution may be reduced proportionately to any decrease in the total municipal budget; and provided further, that for any municipality in which net school spending is greater than the foundation budget, in no case shall the sum of the preliminary local contribution and the base aid and the minimum aid result in a reduction of net school spending to an amount less than the foundation budget amount. The preliminary local contribution shall be defined separately for each municipality's share of each district to which it belongs.

"Professional development allotment", the amount allotted within a district's foundation budget for professional development in any fiscal year. The professional development allotment in any year shall be three percent multiplied by the amount allotted in that year in a district's foundation budget for foundation teaching staff payroll and the foundation support staff payroll.

"Standard of effort", for any year, shall be the lesser of (1) the gross standard of effort for that year and (2) the foundation budget for the year minus the sum of base aid and federal impact aid for that year. The standard of effort for any municipality shall be allotted among the districts to which that municipality belongs.

"Standard of effort gap", the positive difference in any fiscal year between the standard of effort in the fiscal year and the preliminary local contribution in that fiscal year. The standard of effort gap for a municipality shall be allotted among the districts to which that municipality belongs.

"State overburden obligation", the sum of the gross overburden amounts for all municipalities.

"State school aid", all amounts appropriated by the commonwealth under this chapter, chapter seventy-one, and chapter seventy-four, all equal educational opportunity grants, and all per pupil grants included as part of state aid for fiscal year

nineteen hundred and ninety-three except as provided in this chapter. It shall not include any state funding for transportation, for school building construction, for the METCO program or for other categorical grants such as school-to-work transitional grants. The department shall publish tables allotting each municipality's state school aid in fiscal year nineteen hundred and ninety-three amongst the school districts to which the municipality belongs. For municipalities where all students attend regional districts all state school aid shall be allocated amongst the regional districts. The aid received on behalf of students tuitioned out to other districts shall be allotted to the municipality or district paying tuition.

"Total foundation staff", the sum of the foundation teaching staff, foundation support staff, foundation assistants, foundation principals, foundation clerical staff, foundation healthcare staff, foundation central office professional staff, and foundation custodial staff provided that no employee shall be counted as more than one full time equivalent.

"Wage adjustment factor", an adjusted difference between the average annual wage for all jobs in the labor market area in which a municipality is located and the average annual wage in the commonwealth. Average annual wage figures shall be published annually by the division of employment and training. The wage adjustment factor shall be the sum of one plus a fraction, the numerator of which shall be the product of one-third and the difference resulting from subtracting the average annual wage in the commonwealth from the average annual wage of the community; and the denominator of which shall be the average annual wage in the commonwealth.

For the purposes of this section, the average annual wage of the community shall be the sum of:

(a) eight-tenths multiplied by the average annual wage for all jobs in the labor market area in which the municipality is located; plus

(b) two-tenths multiplied by the average annual wage of the municipality; provided, however, that in any community in which the percent of total foundation enrollment represented by the low-income enrollment is greater than the total percent of low-income students in the state, the wage adjustment factor shall not be less than one.

Added by St.1993, c. 71, § 32. Amended by St.1993, c. 110, § 128; St.1993, c. 151, §§ 32 to 38; St.1994, c. 60, §§ 91 to 93; St.1995, c. 38, § 92; St.1996, c. 204, § 24; St.1998, c. 194, § 125; St.1999, c. 127, § 93; St.2002, c. 184, §§ 76, 77; St.2002, c. 218, § 6.

§ 3. Foundation budget; regulations; calculation of budget

For the school district in each municipality, for each regional school district, and for each independent vocational school in the commonwealth, there is hereby established a foundation budget.

The board of education is authorized to adopt regulations furnishing interpretive guidelines for the determination of foundation budgets. Said regulations shall be filed with the house and senate committees on ways and means not less than thirty days before said regulations become effective.

The foundation budget shall be calculated using foundation enrollments for the respective fiscal years as estimated by the department according to the procedures outlined in section 2. The monetary factors used in calculating the foundation budget for such years shall be adjusted for inflation by multiplying each such factor by the foundation inflation index. The factors to be inflated shall be the monetary values for the foundation payroll, foundation nonsalary expenses, professional development allotment, expanded program allotment, extraordinary maintenance allotment and book and equipment allotment.

Added by St.1993, c. 71, § 32. Amended by St.1995, c. 38, § 94; St.2002, c. 184, § 78.

§ 3A. Data necessary to generate required minimum local contribution and state aid components; house and senate committees on ways and means; bi-monthly updates

The secretary of administration and finance in cooperation with the commissioner of revenue and the commissioner of education shall make available to the house and senate committees on ways and means, in an electronically compatible format the criteria, components, equations, and underlying data necessary to generate the required minimum local contribution and each component of state aid authorized for distribution to municipalities and school districts pursuant to this chapter. The department of education shall update said underlying data on a bi-monthly basis, and shall revise said criteria, components and equations upon the occurrence of changes thereto.

Added by St.1995, c. 38, § 95.

§ 4. Foundation budget review commission; membership; recommendations

There is hereby established a foundation budget review commission to review the way in which

foundation budgets are calculated and to make recommendations to the general court regarding such changes in the formula as may be appropriate. In conducting such review, the commission shall seek to determine the educational programs and services needed to prepare students to achieve passing scores on the Massachusetts Comprehensive Assessment System. The commission shall examine the assumed percentage for special education costs included in such formula and shall make recommendations regarding changes in such percentage or other mechanisms to finance special education costs including, but not limited to, reimbursement programs or phased-in, standards-based funding programs that increase the state contribution to such costs over a fixed period of years. The commission shall include the house and senate chairs of the joint committee on education, arts and humanities, who shall serve as co-chairs, the commissioner of education, the chair of the education reform review commission, the speaker of the house of representatives or his designee, the president of the senate or his designee, the minority leader of the house of representatives or his designee, the minority leader of the senate or his designee, the governor or his designee, the chair of the house committee on ways and means or his designee, the chair of the senate committee on ways and means or his designee and one member to be appointed by each of the following organizations: the Massachusetts Municipal Association, the Massachusetts Business Alliance for Education, the Massachusetts Association of School Committees, the Massachusetts Superintendents Association, the Massachusetts Teachers Association, the Massachusetts Federation of Teachers, the League of Women Voters of Massachusetts, the Massachusetts Association for Vocational Administrators and the Massachusetts Association of Regional Schools. Members shall receive no compensation for their services but may receive reimbursement for the reasonable expenses incurred in carrying out their responsibilities as members of the commission. The department shall furnish reasonable staff and other support for the work of the commission.

The commission shall conduct not fewer than four hearings to receive testimony from members of the public. The hearings shall be held in locations that provide opportunities for residents from all geographic regions of the commonwealth to testify.

It shall not constitute a violation of chapter 268A for a person employed by a school district to serve on the commission or to participate in commission deliberations that may have a financial impact on the district employing such person or on the rate at which such person may be compensated. The commission may establish procedures to ensure that no such person participates in commission deliberations that may directly affect the school districts employing such persons or that may directly affect the rate at which such persons are compensated.

The commission's recommendations, together with any proposed legislation, shall be filed not later than September 30 of each even-numbered year with the clerks of the senate and house of representatives who shall refer such recommendations to the appropriate committee of the general court. Within 30 days after such filing, the committee shall hold a public hearing on the recommendations.

Added by St.1993, c. 71, § 32. Amended by St.1996, c. 191, § 2; St.2000, c. 159, § 139.

§ 5. Municipalities receiving overburden aid; reductions

Beginning in fiscal year nineteen hundred and ninety-four and for every fiscal year thereafter, the following shall apply to any municipality receiving overburden aid: the overburden aid amount for said municipality shall be reduced by an amount equal to seventy-five percent of any increase over the prior year in its lottery and additional assistance local aid.

Added by St.1993, c. 71, § 32.

§ 6. Contributions by municipalities for support of local schools and school district

In addition to amounts appropriated for long-term debt service, school lunches, adult education, student transportation, and tuition revenue, each municipality in the commonwealth shall annually appropriate for the support of public schools in the municipality and in any regional school district to which the municipality belongs an amount equal to not less than the sum of the minimum required local contribution, federal impact aid, and all state school aid and grants for education but not including equity aid, for the fiscal year. Based on the amounts specified in section twelve, the allotments described in section thirteen, and the definitions and other provisions in this chapter, the commissioner shall estimate and report such amounts to each municipality and regional school district as early as possible, but no later than March first for the following fiscal year. The commissioner shall

file with the house and senate committees on ways and means, not less than thirty days before said reports are transmitted to each municipality and regional school district, copies or a document reporting all of the information contained in said reports. Notwithstanding the terms of any regional school district agreements to the contrary, no new regional school district shall be required to submit a budget to its member municipalities before receiving the estimate by the commissioner concerning the amount of state school aid payable through the member municipalities to the regional school district for the following fiscal year. Notwithstanding the provisions of any regional school district agreement, each member municipality shall increase its contribution to the regional district each fiscal year by the amount indicated in that district's share of the municipality's minimum regional contribution in that fiscal year. The district shall appropriate the sum of the minimum regional contributions of its member districts as well as all state school aid received on behalf of member municipalities. The district may choose to spend additional amounts; such decisions shall be made and such amounts charged to members according to the district's required agreement.

Beginning after June 30, 1998, no regional vocational school district shall have a required net school spending amount that exceeds 150 per cent of its foundation budget. If the required net school spending exceeds 150 per cent of foundation, then the minimum contribution, or contributions in the case of a regional school district, shall be reduced so that the required net school spending is not more than 150 per cent of foundation. In a regional school district, such reduction shall be done in proportion to the members' enrollment share. If a community that receives a reduced minimum contribution to one of its school districts pursuant to this section belongs to any other district that is below foundation, such community's minimum contribution to the below foundation district shall be increased up to the amount of the decrease authorized by this section or the foundation budget, whichever is less.

Added by St.1993, c. 71, § 32. Amended by St.1998, c. 194, § 126.

§ 7. Reductions in amount appropriated

If there is appropriated in any fiscal year a sum smaller than the amount of state school aid specified in section twelve, any school appropriations based on the commissioner's estimate shall be reduced without further action by the school committee, town meeting, or city council by an amount equal to the value that state school aid and minimum required local contribution for the district are below the amount estimated by the commissioner unless the district or the member municipalities take specific actions to the contrary. For the purposes of this section the amount of state school aid appropriated to a city or town shall be the amount appropriated by the annual appropriation act without regard to any deductions pursuant to subsection (f) of section twelve B of chapter seventy-six.

Added by St.1993, c. 71, § 32.

§ 8. Districts' methods for allocating appropriated funds; under-performing districts; restrictions

Except as required by General Law, each school district may determine how to allocate any funds appropriated for the support of public schools without regard to the categories employed in calculating the foundation budget; provided, however, that effective July 1, 1997, school or school districts which are determined to be under-performing or chronically under-performing within the meaning of sections 1J and 1K of chapter 69 may not allocate any such funds to cover legal expenses incurred in challenging such determination or in challenging actions taken by the board, the department or the commissioner in connection with such determination.

Added by St.1993, c. 71, § 32. Amended by St.1997, c. 88, § 24.

§ 9. Reports on amounts spent for certain expenses

School districts shall report each fiscal year to the commissioner of education on the amounts spent for extraordinary maintenance, extended programming, professional development, and books and instructional equipment. To the extent that the amounts spent for these purposes fall short of the allotments defined in this chapter, the superintendent shall explain the reasons for the shortfall.

School districts shall report each fiscal year to the commissioner of education on the amounts spent for administrative expenses. To the extent that the amounts spent for these purposes exceed the allotments defined in this chapter, the superintendent shall explain the reasons for the additional costs.

Added by St.1993, c. 71, § 32.

§ 10. Aid paid to municipalities and districts; amounts

Subject to appropriation, the amount of state aid to be paid to each municipality in each fiscal year under this chapter shall be the sum of the base aid, the overburden aid, minimum aid, foundation aid and equity aid to which the municipality may be entitled under the provisions of this chapter. The amount of aid paid to each district shall be identified separately for each municipality that is a member of the district.

Added by St.1993, c. 71, § 32.

§ 11. Excess funds; application to following fiscal year

If in any fiscal year a district's actual expenditure for public education is less than the amount required to be appropriated for public education pursuant to this chapter, the difference, up to 5 per cent of the amount required to be appropriated, shall be spent for public education in the following fiscal year; provided, however, that any unexpended funds, whether appropriated to the school committee account or to town accounts for expenditure to meet public education costs, shall be deemed reappropriated for public education in the following year without further action by the appropriating authority; provided, further, that the amount of state school aid for the following fiscal year shall be reduced by the amount said difference exceeds 5 per cent of the amount required to be appropriated; and provided, further, that in any year in which additional money is required to be spent due to a spending deficiency in the prior year, if a district fails to spend the carried forward amount or under-spends its current year budget by more than 5 per cent of the amount required to be appropriated for that year, state school aid in the following year shall be reduced by the entire difference between those amounts. The board shall promulgate regulations to enforce the provisions of this section.

Added by St.1993, c. 71, § 32. Amended by St.1997, c. 43, § 68.

§ 12. Determination of amounts appropriated

(a) Subject to appropriation, beginning in fiscal year nineteen hundred and ninety-four and for all subsequent fiscal years, the amounts appropriated for state school aid in any given year shall be equal to the sum of the adjusted prior year amount and the education improvement amount.

(b) The adjusted prior year amount for state school aid shall be the amount of state aid appropriated in the previous fiscal year, multiplied by an annual adjustment factor equal to the ratio of (i) the implicit price deflator for state government services as published by the United States department of commerce for the first quarter of the prior fiscal year to (ii) the same deflator one year earlier; provided, however, that the annual adjustment factor utilized in fiscal year nineteen hundred and ninety-four shall be equal to one. In no case shall the annual adjustment factor exceed one hundred and four percent.

(c) The education improvement amount shall be an amount of additional state school aid as hereinafter described for the fiscal years nineteen hundred and ninety-four to two thousand, inclusive: in fiscal year nineteen hundred and ninety-four, an additional one hundred and forty million dollars; in fiscal year nineteen hundred and ninety-five, an additional one hundred and fifty million dollars; in fiscal year nineteen hundred and ninety-six, an additional one hundred and fifty million dollars; in fiscal year nineteen hundred and ninety-seven, an additional one hundred and fifty million dollars; in fiscal year nineteen hundred and ninety-eight, an additional one hundred and fifty million dollars; in fiscal year nineteen hundred and ninety-nine, an additional one hundred and eighty million dollars; and in fiscal year two thousand, an additional one hundred and eighty million dollars. The dollar amounts in this subsection shall be adjusted for inflation by multiplying the amounts for fiscal year nineteen hundred and ninety-five and subsequent years by the ratio of the implicit price deflator for state and local government purchases for the first quarter of the prior fiscal year to the value of the same deflator in the first quarter of fiscal year nineteen hundred and ninety-three. In no case shall this adjustment factor be greater than what would be derived by a four percent annual adjustment compounded on a yearly basis.

Added by St.1993, c. 71, § 32. Amended by St.1995, c. 38, §§ 96, 97.

§ 13. Allocation of funds

(a) The funds appropriated for state school aid shall be allocated among municipalities as set forth in this chapter. If said amount appropriated is less than the total base aid amount, each municipality's allotment of base aid shall be reduced by a constant amount per student that shall be determined by dividing the difference between the total base

amount and said appropriation amount by the total foundation enrollment in the state.

(b) If the amount appropriated is more than the base amount, funds shall first be allocated to ensure that state school aid for each municipality equals the base aid amount.

(c) Any additional funds shall be allocated to cover minimum aid. If the amount appropriated for state school aid is insufficient to permit full funding of the base aid and minimum aid, funds in excess of the amount needed to fund base aid shall be allocated on a proportional basis reflecting the ratio of a particular municipality's minimum aid to the sum of minimum aid amounts of all municipalities for that fiscal year.

(d) All remaining funds shall be allocated to cover foundation aid, equity aid, and overburden aid.

(e) The allocation to each municipality that received foundation aid of more than the minimum aid amount above the base amount shall be reduced by an amount that is the lesser of (1) the minimum aid amount and (2) the positive difference, if any, between its foundation aid and minimum aid. The funds available from this reduction shall be allocated to all municipalities such that each one receives the same proportion of this aid as was received in paragraph (d). These increments shall be considered part of foundation aid, equity aid, and overburden aid.

Added by St.1993, c. 71, § 32.

§ 14. Exemption of certain districts from chapter

For any district in which fewer than twenty percent of the students scored below the state average on the assessment tests required by chapter sixty-nine, the city or town, or all cities and towns comprising a regional school district, may exempt the district from the provisions of this chapter by accepting this section in the manner prescribed by section four of chapter four. Any district so exempted shall continue to receive fiscal year nineteen hundred and ninety-three base aid, but shall not receive any additional state aid and shall not be required to meet the local obligation requirements of this chapter.

If, in any future year, a district so exempted fails to meet the assessment standards described above, or for any other reason is not exempt from this chapter, it shall, in that and future years, be subject to the same obligations and entitled to the same aid under this chapter in each year as districts that were never so exempted.

Added by St.1993, c. 71, § 32.

§ 15. Applicability of chapter

This chapter shall apply to all cities, towns, and regional school districts, notwithstanding section twenty-seven C of chapter twenty-nine, and without regard to any acceptance or appropriation by a city, town or regional school district or to any appropriation by the general court.

Added by St.1993, c. 71, § 32.

CHAPTER 70B

SCHOOL BUILDING ASSISTANCE PROGRAM

Chapter 70B of the General Laws was added by St.2000, c. 159, § 140.

Section

1. School building assistance program; establishment.
1A. School Building Authority.
2. Definitions.
3. Purpose of program; board of education; general policy and review standards; specific powers of board.
3A. School building advisory board; establishment; members.
3B. Bonds.
3C. School building authority; termination; projects to conform to federal statutory mandates.
3D. Accounts; annual report.
3E. Municipality indebted to authority; offset of deficiency by state treasurer's disbursement of funds payable to indebted municipality.
4. Reimbursement for incidental educational, engineering and architectural services; application and documentation.
5. School facilities grant applications.
6. Examination of application by board of education; notice of approval or rejection.
7. Limit on estimated amount of grants approved by authority.
8. Order of priorities for approval of school projects and reimbursements; deferral of approval or disapproval of project applications.
9. Cost effective production of efficient and creative school projects; standards and procedures; regulations.
10. Facilities grants for approved projects; formula.
11. Disbursement schedule.
12, 13. Repealed.
14. Approved alternative projects; allowable costs.
15. Sale or lease of school buildings for which school facilities project applicant receives grant payments.
16. Maintenance assessment program for school buildings.
17. Annual report; anticipated needs for school facilities projects.
18. Repealed.
19. Notification of actual interest rate for bond issuance.

The section headings for the General Laws in this pamphlet have been editorially supplied

DERIVATION TABLE

Showing where a law relating to state aid for school building construction, enacted by St.1948, c. 645, as amended, classified in M.G.L.A. as Chapter 70 Appendix §§ 1–1 to 1–21, and repealed by St.2000, c. 159, § 295, can be found in Chapter 70B, §§ 1 to 19, enacted by St.2000, c. 159, § 140.

Former c. 70 App. Sections	New c. 70B Sections
1–1	1
1–2	3
1–3	2
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§ 1. School building assistance program; establishment

Whereas the school building assistance program is the largest capital grant program operated by the commonwealth and is necessary for the establishment of public school buildings in the commonwealth; and whereas the costs of the school building assistance program are increasing at an unsustainable rate and local governments need flexibility in school building assistance to ensure that local needs for school facility space, downtown development, open space and community space are met; and to promote the thoughtful planning and construction of school facility space in order to insure safe and adequate plant facilities for the public schools, and to assist towns in meeting the cost thereof, there is hereby established a school building assistance program. It is in the best interests of the commonwealth and its citizens to create an authority to achieve the objectives of effective management and planning of the com-

monwealth's investments in school building assets, promoting positive educational outcomes, ensuring the health, safety, security and well-being of students, easing and preventing overcrowding, maintaining good repair, efficient and economical construction and maintenance, financial sustainability of the school building assistance program, thoughtful community development, smart growth and accessibility.

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, § 1, eff. July 26, 2004.

§ 1A. School Building Authority

(a) There is hereby created a body politic and corporate and a public instrumentality to be known as the Massachusetts School Building Authority, which shall be an independent public authority not subject to the supervision and control of any other executive office, department, commission, board, bureau, agency or political subdivision of the commonwealth except as specifically provided in any general or special law. The exercise by the authority of the powers conferred by this chapter shall be considered to be the performance of an essential public function.

(b) The authority shall consist of the state treasurer, who shall serve as chairperson, the secretary of administration and finance, the commissioner of education, and 4 additional members appointed by the state treasurer, 2 of whom shall have practical experience in educational facilities planning, school building construction, or architecture and school design, and 2 of whom shall be persons in the field of education with demonstrated knowledge of Massachusetts curriculum frameworks and other relevant federal and state educational standards, each of whom shall serve a term of 2 years; but, a person appointed to fill a vacancy shall serve only for the unexpired term. An appointed member of the authority shall be eligible for reappointment. The authority shall annually elect 1 of its members to serve as vice-chairperson. Each member of the authority serving ex officio may appoint a designee pursuant to section 6A of chapter 30.

(c) Four members of the authority shall constitute a quorum, and the affirmative vote of 4 members of the authority shall be necessary and sufficient for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and duties of the authority. Members shall serve without pay but shall be reimbursed for actual expenses necessarily incurred in the performance of their duties. The chairperson of the authority shall report to the governor and to the general court no less than annually, to assist the executive and legislative branches in coordinating educational, community development and fiscal policies of the commonwealth.

(d) Any action of the authority may take effect immediately and need not be published or posted unless otherwise provided by law. Meetings of the authority shall be subject to section 11A ½ of chapter 30A; but, said section 11A ½ shall not apply to any meeting of members of the authority serving ex officio in the exercise of their duties as officers of the commonwealth so long as no matters relating to the official business of the authority are discussed and decided at the meeting. The authority shall be subject to all other provisions of said chapter 30A, and records pertaining to the administration of the authority shall be subject to section 42 of chapter 30 and section 10 of chapter 66. All moneys of the authority shall be considered to be public funds for purposes of chapter 12A. The operations of the authority shall be subject to chapter 268A and chapter 268B and all other operational or administrative standards or requirements to the same extent as the office of the state treasurer.

Added by St.2004, c. 208, § 2, eff. July 26, 2004.

§ 2. Definitions

For the purposes of this chapter, the following words shall have the following meanings:-

"Additional Revenues", any moneys that are not defined as the dedicated sales tax revenue amount that are appropriated, gifted, granted, pledged, or otherwise made available to the authority by the commonwealth, any local governmental entity, the federal government, not-for- profit organizations, for-profit organizations, or private individuals.

"Advisory board", the school building advisory board.

"Alternatives to construction", approved school facilities projects that do not include capital construction, major reconstruction or building renovation, but no alternative project shall be reimbursed if it is determined by the authority to be more costly than construction necessary to achieve the same end.

"Approved school project", a school project approved by the authority.

"Assisted facility", a school facility that has received a total facilities grant pursuant to this chapter.

"Authority", the Massachusetts School Building Authority.

"Capital construction project", any capital project, other than a major reconstruction project, for the construction, the enlargement or original equipping of any public schoolhouse in any city or town, or a project for the renovation or partial renovation of an existing structure for use as a schoolhouse; or the renovation or partial renovation of an existing schoolhouse.

"Construction manager", construction manager as defined by section 38A ½ of chapter 7.

"Dedicated sales tax revenue amount", all moneys received by the commonwealth equal to 1 per cent of the receipts from sales, as defined by chapter 64H, and 1 per cent of the sales price of purchases, as defined by chapter 64*I*, from that portion of the taxes imposed under chapters 64H and 64*I* as excises upon the sale and use at retail of tangible property or of services, and upon the storage, use or other consumption of tangible property or of services, including interest thereon or penalties, but not including any portion of the taxes that constitute special receipts within the meaning of subsection (b) of section 10 of chapter 152 of the acts of 1997 or any portion of the taxes imposed on the sale of meals as defined in paragraph (h) of section 6 of chapter 64H.

"Eligible applicant", a city, town, regional school district or independent agricultural and technical school.

"Energy efficient construction rating", rating given to eligible applicants by the authority based upon a determination that the construction techniques of an approved school project meet or exceed energy efficiency standards established by the board of building regulations and the National Institute of Standards and Technology and which meet the purposes of subsection (c) of section 9 of chapter 23J.

"Innovative community use", approved school facilities projects that combine community resources to streamline the costs of and utilize other funding sources for the facilities project.

"Maintenance rating", rating given to schools and school districts by the authority, based on a maintenance assessment conducted by the authority.

"Major reconstruction project", any capital school facilities or extraordinary maintenance project including, but not limited to, the retrofitting of a school for the purpose of providing wireless or other learning technologies, the replacement of a roof or heating plant if it is determined by the board that such project has not been necessitated, in whole or in part, by the failure of an eligible applicant to make adequate and prudent provisions for the care and maintenance of said school.

"Nonstate fundraising", third party monies made available to the eligible applicant for approved school facilities projects including, but not limited to, private donations and federal grants.

"Project manager", a person designated or assigned by an eligible applicant, and approved by the authority, to manage and coordinate daily administration of a school facility or building project to completion including, but not limited to, school district or municipal staff person or a volunteer with appropriate experience and expertise.

"Prototypical school plans", school building project architectural designs and plans collected and maintained by the authority for consultation by eligible applicants.

"Regional school", any public school established under law by the action of two or more cities or towns. For the purposes of this chapter, the agricultural schools maintained by the counties of Bristol and Norfolk shall be deemed to be regional schools.

"Regional school district", any instrumentality of the commonwealth, established by two or more cities and towns for the purpose of operating a regional school.

"School project", any capital construction or major reconstruction projects; the lease of buildings or modular facilities; arrangements with higher education facilities or other nonprofit or municipal entities; use of swing space between school buildings in the district; tuition arrangements with other school districts to prevent overcrowding; and other school facilities projects. The cost of tuition arrangements in existence prior to project application shall not be eligible for reimbursement as an approved school project.

"Total facilities grant", the total grant with respect to an approved school project and which is calculated as follows: In the case of a grant for an approved project of a city or town, the total facilities grant shall be the product of multiplying the

final approved costs of such project, including costs referred to in section 4, by the reimbursement percentage determined pursuant to section 10 for the year in which the project is approved.

(1) In the case of a grant for an approved project of a regional school district or a county, the total facilities grant shall be the sum of the grants computed separately for each city and town which is a member of said regional school district or located in said county as hereinafter provided. For purposes of this computation, each member city's and town's share of the combined grant shall be equal to the total approved project cost, including costs referred to in section 4, multiplied by the product of the reimbursement percentage listed in subsection (a) of section 10, multiplied by the percentage of district or county capital costs that would be apportioned to such city or town in accordance with the applicable regional school district agreement or law for capital costs incurred in the fiscal year in which the grant is approved. The amount of the total capital costs apportioned to a member city or town in any fiscal year on account of an approved school project of a regional school or county, determined in accordance with the applicable regional school district agreement or law, shall be reduced by an amount equal to the amount of the grant payable on account of such project in such fiscal year multiplied by a fraction the numerator of which is the city's or town's reimbursement percentage, determined as aforesaid, multiplied by the percentage of capital costs apportioned to the city or town for such fiscal year in accordance with the applicable regional school district agreement or law and the denominator of which is the sum of the percentages so derived as the numerators for all of the member cities and towns.

(2) In the case of a grant for an approved project of an independent agricultural and technical school, the total facilities grant shall be the sum of the grants computed separately for each city and town in which students of said school reside averaged by means of a weighted average multiplied by the final approved costs.

"Trust", the Massachusetts School Modernization and Reconstruction Trust, established by section 35BB of chapter 10.

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, §§ 3 to 11, eff. July 26, 2004; St.2006, c. 122, §§ 27, 28, eff. June 24, 2006; St.2006, c. 139, § 43, eff. July 1, 2006; St.2009, c. 158, § 22, eff. Nov. 23, 2009.

§ 3. Purpose of program; board of education; general policy and review standards; specific powers of board

There is hereby established a school building assistance program. The purpose of said program is generally to encourage and foster the thoughtful establishment and maintenance of school facility space in and among the cities and towns of the commonwealth; to conduct surveys and studies relative thereto; and to administer the provisions of this chapter relative to grants and loans to cities and towns for the planning and construction of school building and school facility projects.

The purposes of the program shall be the provision of financial assistance to cities, towns and regional school districts as beneficiaries of the trust to finance and refinance the costs of approved school projects as provided in, and as necessary to implement this chapter, including without limitation providing for the payment of grants approved pursuant to this chapter and the payment of all costs of the authority, including professional and financial services incident to the conduct of its operations.

The authority shall establish general policy and review standards regarding school building construction, renovation, maintenance and facility space and administer the school building assistance program in accordance with this chapter. In carrying out its duties, the authority shall be guided by the following principles: preservation of open space and minimization of loss of such open space, emphasis on thoughtful community development, and project flexibility that addresses the needs of individual communities and municipalities. In accordance with the terms of any bond resolution, trust or security agreement or credit enhancement agreement, surety bond or insurance policy related to indebtedness incurred by the authority secured by amounts provided to the trust in accordance with section 35BB of chapter 10, the holders of indebtedness and the providers of any credit enhancement, surety bond or insurance policy shall also be beneficiaries of the trust. The authority shall apply and disburse moneys and revenues of the trust without further appropriation or allotment.

The authority, shall establish general policy and review standards regarding school building construction, renovation, maintenance and facility space, administer the school building assistance program in accordance with this chapter and coor-

dinate the distribution of school facilities grants in accordance with this chapter. The board shall be responsible for the oversight and management of the school building assistance program as established herein and referred to hereafter as the "program". In carrying out its duties, the authority shall be guided by the following principles: preservation of open space and minimization of loss of such open space; emphasis on thoughtful community development; and project flexibility that addresses the needs of individual communities and municipalities.

Specific powers of the authority shall include, but not be limited to, the following:

(a) review, approve or deny grant applications, waivers and other requests submitted to the program; review, approve and recommend changes to grant payment schedules or suspend said schedules for program projects such as refinancings, audit findings and such other circumstances that may warrant such action;

(b) provide architectural or other technical advice and assistance, training and education, to cities and towns or to joint committees thereof and to general contractors, subcontractors, construction or project managers, designers and others in the planning, maintenance and establishment of school facility space;

(c) recommend to the general court such legislation as it may deem desirable or necessary to further the purposes of this chapter;

(d) develop a formal enrollment projection model or consider using projection models already available;

(e) to apply for, receive, administer and comply with the conditions and requirements respecting any grant, gift or appropriation of property, services or moneys;

(f) to enter into contracts, arrangements and agreements with other persons and execute and deliver all trust agreements, grant agreements and other instruments necessary or convenient to the exercise of the powers of the trust;

(g) to borrow and repay money by issuing bonds or notes of the trust, to apply the proceeds thereof as provided in this chapter and to pledge or assign or create security interests in any revenues, receipts or other assets or funds of the trust to secure bonds or notes;

(h) develop a project priority system;

(i) collect and maintain a clearinghouse of prototypical school plans which may be consulted by eligible applicants;

(j) determine eligibility of cost components of projects for reimbursement, including partial or full eligibility for project components for which the benefit is shared between the school and other municipal entities;

(k) establish appropriate rules and regulations as may be necessary to carry out the purposes of this chapter;

(*l*) prepare an annual budget for the administration of the program;

(m) collect and maintain data on all the public school facilities in the commonwealth, including information on size, usage, enrollment, available facility space and maintenance;

(n) perform or commission a needs survey to ascertain the capital construction, reconstruction, maintenance and other capital needs for schools in the commonwealth;

(*o*) develop a long term capital plan in accordance with needs and projected funding;

(p) adopt and amend bylaws and such rules, regulations and procedures for the conduct of the business of the trust as the board shall deem necessary to carry out the provisions of this chapter;

(q) establish and maintain reserves;

(r) disburse amounts due to cities, towns and regional school districts under grants approved by the authority to finance or refinance costs of approved school projects and, in conjunction therewith, finance or refinance the local share of costs of these projects, through the purchase of bonds, notes or other evidences of local indebtedness, at the rates and on the terms that the authority may in its discretion determine, and provide for the payment of all costs of the authority, including professional and financial services incident to the conduct of its operations;

(s) invest the funds of the trust in such investments as may be legal investments for funds of the commonwealth or any fiduciary in the commonwealth;

(t) obtain insurance and enter into agreements of indemnification necessary or convenient to the exercise of the powers of the trust;

(u) sue and be sued and to prosecute and defend actions relating to the affairs of the trust; but the

trust shall not be authorized to become a debtor under the United States Bankruptcy Code;

(v) engage accounting, management, legal, financial, consulting and other professional services necessary to the operations of the trust; and

(w) do all things necessary or convenient to carry out the purposes of this chapter.

The chairperson of the authority shall appoint an executive director, who shall supervise the administrative affairs and general management and operations of the authority and who shall also serve as secretary of the authority, ex officio. The executive director shall receive a salary commensurate with the duties of the office, and may be removed by the board for cause. The executive director may appoint other officers of the authority necessary to the functioning of the authority. The executive director shall designate no fewer than 1 employee to be a municipal liaison to assist cities and towns with concerns regarding the construction of schools. Sections 9A, 45, 46, and 46C of chapter 30, chapter 31 and chapter 150E shall not apply to the executive director or any other employees of the authority. The executive director shall, with the approval of the authority: (i) plan, direct, coordinate and execute administrative functions in conformity with the policies and directives of the authority; (ii) employ professional and clerical staff as necessary; (iii) report to the authority on all operations under his control and supervision; (iv) prepare an annual budget and manage the administrative expenses of the authority; and (v) undertake any other activities necessary to implement the powers and duties set forth in this chapter.
Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, §§ 12 to 15, eff. July 26, 2004; St.2004, 210, §§ 2, 3, eff. July 28, 2004; St.2006, c. 139, §§ 44, 45, eff. July 1, 2006.

§ 3A. School building advisory board; establishment; members

(a) There shall be a school building advisory board comprised of the state auditor or his designee, the inspector general or his designee, and the executive director of the authority, who shall serve as the secretary to the advisory board and shall be a nonvoting member of the board, and 15 members to represent the following nongovernmental organizations, to be appointed by those organizations: the Massachusetts Municipal Association, the Massachusetts Association of School Committees, the Massachusetts Mayors Association, the Massachusetts Association of School Superintendents, the Massachusetts Association of Regional Schools, the Massachusetts Building Trades Council, the Massachusetts chapter of the Associated Builders and Contractors, the Massachusetts Alliance of Small Contractors, the American Council of Engineering Companies of Massachusetts, the Associated Subcontractors of Massachusetts, the American Institute of Architects–Massachusetts, the Massachusetts Smart Growth Alliance, the Massachusetts Taxpayers Foundation, Associated General Contractors of Massachusetts and acting jointly, the Massachusetts Teachers Association and Massachusetts Federation of Teachers. The advisory board shall assist the authority in the development of general policy regarding school building construction, renovation, reconstruction, maintenance and facility space, preservation of open space and minimization of loss of open space, thoughtful community development, cost management and shall provide technical advice and input to the authority. The advisory board shall meet at least quarterly.

[There is no subsection (b).]

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, § 16, eff. July 26, 2004.

§ 3B. Bonds

(a) The authority may provide by resolution for the issuance from time to time of bonds for any purpose of the trust, which bonds may be issued as general obligations of the authority or as special obligations payable solely from particular revenues or moneys of the authority. Bonds of the authority shall not be considered to be a debt of the commonwealth or of any of its political subdivisions. The bonds of each issue may be dated, may bear interest at such rate or rates, including rates variable from time to time, and may mature or otherwise be payable or redeemable at such times as the authority may determine. The authority shall determine the denominations of bonds, the details of their execution and authentication and their places of payment within or without the commonwealth. Before initial issuance of each series of bonds the authority shall advise the finance advisory board of the terms of the bonds and the timing of their issuance. In case any member or officer of the authority whose signature appears on any bonds shall cease to be such officer before their delivery, the signature shall nevertheless be valid and sufficient as if the officer had remained in office until delivery. Bonds may be issued in certificated or uncertificated form, payable to bearer or registered owners, and, if notes, may be made payable to

bearer or to order. The authority may sell the bonds of the authority at public or private sale, at par or for such premium or discount price as it may determine. The authority may by resolution delegate to any member or officer of the authority the power to determine any of the matters set forth in this section. The aggregate principal amount of all bonds issued under this chapter shall not exceed $10,000,000,000 outstanding at any time. The principal amount of bonds for the payment or redemption of which, either at or before maturity, refunding bonds shall have been issued, shall be excluded from the aggregate principal amount of bonds issued under this chapter for purposes of computing the limit on outstanding bonds under this section.

(b) Bonds of the authority may be secured by a trust agreement between the authority and the bond owners or a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the commonwealth. A trust agreement may pledge or assign, in whole or in part, any receipts, fees, revenues or other payments received or to be received by the authority, including without limitation amounts provided to the trust in accordance with section 35BB of chapter 10, grants, appropriations or other assistance from the commonwealth or the United States or any political subdivision or instrumentality of either, investment earnings on its funds and accounts and any other fees, charges or other income received or receivable by the authority and any contract or other rights to receive the same, whether then existing or thereafter coming into existence, and whether then held or thereafter acquired by the trust, and the proceeds thereof. A trust agreement may contain, without limitation, provisions for protecting and enforcing the rights, security and remedies of the bondholders, provisions defining defaults and establishing remedies, which may include acceleration and may also contain restrictions on remedies by individual bondholders. A trust agreement may also contain covenants of the trust concerning the custody, investment and application of moneys, the issuance of additional or refunding bonds, the use of any surplus bond proceeds, the establishment of reserves and the regulation of other matters customarily treated in trust agreements. At the request of the authority, the state treasurer shall join in any trust agreement or to otherwise agree with the authority, any lender or any trustee for bondholders to hold the School Modernization and Reconstruction Trust Fund, established pursuant to said section 35BB of said chapter 10, in compliance with any covenants and provisions relating thereto in any trust agreement.

(c) Bonds may be issued by the authority in the form of lines of credit or other banking arrangements under terms and conditions determined by the authority. In addition to other lawful security, bonds may be secured, in whole or in part, by financial guaranties, by insurance, by letters or lines of credit or by other credit enhancement issued to the authority or to a trustee or other person, by any bank, trust company, insurance or surety company or other financial institution, within or without the commonwealth. The authority may pledge or assign, in whole or in part, revenues, funds or other assets or property held or to be received by the authority, and any contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the authority, and the proceeds thereof, as security for any such guaranties or insurance or for the reimbursement to any issuer of a line or letter of credit.

(d) The authority may by resolution provide for the issuance by the authority of interim receipts or temporary bonds, exchangeable for definitive bonds when the bonds are executed and are available for delivery. The authority may also provide for replacement of mutilated, destroyed or lost bonds. The authority may purchase and invite offers to tender for purchase any outstanding bonds; provided, however, that no purchase by the authority shall be made at a price, exclusive of accrued interest, if any, exceeding the principal amount of the bond or, if greater, the redemption price of the bond when next redeemable at the option of the authority. The authority may resell any bonds it purchases in such manner and for such price as it may determine.

(e) The authority may also provide for issuance by the authority of temporary notes in anticipation of bonds, grants, revenues or appropriations. The issuance of the notes shall be governed by this chapter relating to the issuance of bonds. The authority may also issue refunding bonds of the authority for the purpose of paying any bonds at or before maturity. Refunding bonds may be issued at any time at or before the maturity or redemption or purchase of the refunded bonds. Refunding bonds may be issued in sufficient amounts to pay or provide for payment of the principal of the bonds being refunded, together with any redemp-

tion premium thereon, any interest or discount accrued or to accrue to the date of payment, costs of issuance and other expenses and reserves reasonably necessary to achieve the refunding.

(f) Bonds of the authority are securities in which public officers and agencies, insurance companies, financial institutions, investment companies, executors, administrators, trustees and others may properly invest funds including capital within their control and securities which may be deposited with any public officer or any agency for any purpose for which the deposit of bonds is authorized by law.

(g) Bonds of the authority shall be considered to be investment securities under chapter 106. Bonds, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be exempt from taxation by and within the commonwealth. The authority shall not be required to pay any taxes, assessments or excises upon its income, existence, operation, assets, moneys or revenues.

(h) It shall be lawful for any bank or trust company to act as a depository or trustee under a trust agreement, provided it furnishes such indemnification and reasonable security as the authority may require. Any assignment or pledge of revenues, funds or other assets or property made by the authority shall be valid and binding and shall be deemed continuously perfected for the purposes of chapter 106 and other laws when made. The revenues, funds and other assets and property, rights therein and thereto and proceeds so pledged and then held or thereafter acquired or received by the authority shall immediately be subject to the lien of the pledge without any physical delivery or segregation or further act, and the lien of the pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the authority, whether or not the parties have notice thereof. The trust agreement by which a pledge is created need not be filed or recorded to perfect the pledge except in the records of the trustees and no filing need be made pursuant to said chapter 106. Any pledge or assignment made by the authority is an exercise of its political and governmental powers, and revenues, funds, assets, property and contract or other rights to receive the same and the proceeds thereof which are subject to the lien of a pledge or assignment created under this chapter shall not be applied to any purposes not permitted by the pledge or assignment. Any holder of a bond and any trustee under a trust agreement, except to the extent its rights may be restricted by the trust agreement, may bring suit upon the bonds and may pursue any other legal action to protect and enforce its rights and compel performance of all duties required to be performed by the trust and the authority.

Added by St.2004, c. 208, § 17, eff. July 26, 2004.

§ 3C. School building authority; termination; projects to conform to federal statutory mandates

The authority and its existence shall continue until terminated by law, but no such law shall take effect so long as the authority shall have bonds outstanding unless adequate provision has been made for the payment or satisfaction thereof. Upon termination of the authority, the title to all properties of the authority that remain after provision for the payment or satisfaction of all bonds of the authority shall vest in the commonwealth. The obligations, debts and liabilities of the authority shall be assumed by and imposed upon the commonwealth and shall be transferred to the state treasurer or to such other successor as may be provided by law.

The commonwealth, subject to appropriation and article 62 of the constitution of the commonwealth, may appropriate, pledge its credit, guaranty, or support the funding of capital construction projects, major reconstruction projects, capital improvements required under the Americans With Disabilities Act, new construction, other improvements, major repairs or renovations, any other projects to conform to federal statutory mandates, or projects specifically authorized and funded from additional revenues by legislation enacted by the general court after July 1, 2004.

The authority shall not be obligated to make any expenditures for any commitments, improvements, repairs, renovations, capital construction projects, major reconstruction projects, capital improvements required under the Americans With Disabilities Act, new construction, other improvements, major repairs or renovations, any other projects to conform to federal statutory mandates, or projects specifically authorized or mandated for which the necessary additional revenues to complete these commitments, improvements, repairs, renovations, capital construction projects, major reconstruction projects, capital improvements required under the Americans With Disabilities Act, new construction, other improvements, major repairs or renovations,

or any other projects to conform to federal statutory mandates, have not been made available to the authority by the commonwealth.

Any commitments, improvements, repairs, renovations, capital construction projects, major reconstruction projects, capital improvements required under the Americans With Disabilities Act, new construction, other improvements, major repairs or renovations, any other projects to conform to federal statutory mandates, or projects specifically authorized or mandated for which the necessary additional revenues to complete these commitments, improvements, repairs, renovations, capital construction projects, major reconstruction projects, capital improvements required under the Americans With Disabilities Act, new construction, other improvements, major repairs or renovations, or any other projects to conform to federal statutory mandates, so authorized or mandated and for which additional revenues have been made available shall be subject to the rules, laws and regulations of the authority.

Added by St.2004, c. 208, § 17, eff. July 26, 2004. Amended by St.2006, c. 122, § 29, eff. June 24, 2006.

§ 3D. Accounts; annual report

The authority, in cooperation with the state treasurer, shall at all times keep accounts of all receipts, expenditures and disbursements and all assets and liabilities of the authority, which shall be open to inspection by any officer or duly appointed agent of the commonwealth. The authority shall submit an annual report, in writing, to the governor and the clerks of the house of representatives and the senate, who shall forward the same to the president of the senate, the speaker of the house of representatives, the chairpersons of the house and senate committees on ways and means and the house and senate chairpersons of the joint committee on education, arts and humanities. The report shall include financial statements relating to the operations, assets and expenditures of the authority maintained in accordance with generally accepted accounting principles so far as applicable and audited by an independent certified public accountant firm.

Added by St.2004, c. 208, § 17, eff. July 26, 2004.

§ 3E. Municipality indebted to authority; offset of deficiency by state treasurer's disbursement of funds payable to indebted municipality

In addition to other remedies of the authority under any bond, note or other evidence of indebtedness, if at any time any amount is distributable or payable by the commonwealth to any city, town or regional school district, and a sum is due to the authority from that city, town or regional school district, for any cause whatsoever, the sum due to the authority, as certified by the authority to the state treasurer, shall be deducted by the state treasurer from the amount distributable or payable to the city, town or regional school district and shall be paid promptly to the authority. Payment by the state treasurer under this section shall continue to be made until the deficiency on the part of the city, town or regional school district has been offset by the payments from the state treasurer. The authority may also recover from that city, town or regional school district, in an action in superior court, any amount due the authority, together with any other actual damages the authority shall have sustained from the failure or refusal of that city, town or regional school district to make payments owing to the authority.

Added by St.2006, c. 139, § 46, eff. July 1, 2006.

§ 4. Reimbursement for incidental educational, engineering and architectural services; application and documentation

Any eligible applicant may apply to the board for reimbursement, in whole or in part, of any expenses incurred for educational, engineering and architectural services incidental to the planning of a regional school or any expenses incurred for surveys made of school building needs and conditions, the contract for which has been approved by the authority. Such application shall be accompanied by information and documentation that the authority may require.

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, §§ 18, 19, eff. July 26, 2004.

§ 5. School facilities grant applications

An eligible applicant may submit to the authority a statement of interest which shall be approved by a vote of the applicable local governing body or bodies as set forth and in a form prescribed by the authority, and which shall state what the eligible applicant believes are the deficiencies in said eligible applicant's respective school facilities that meet one or more of the statutory priorities set forth in section 6, 8 and 9 of this chapter or in such additional regulations as the authority may promulgate. Said statement of interest shall be accompanied by such additional forms, documents, and information as the authority shall deem necessary

to review the statement. The submission for a statement of interest shall not commit the authority to accept any further application materials, approve an application, or provide a grant or any other type of funding, or place any other obligation or requirement upon the authority. The authority shall notify an eligible applicant if the authority determines that the statement of interest has not met the criteria established in said sections 6, 8, and 9.

If the authority determines that the statement of interest and associated material merits further consideration, the authority may, in its discretion, invite the eligible applicant to apply to the authority for a school facilities grant to meet in part the cost of a school project; but, a city, town, regional school district or independent agricultural and technical school shall not have an entitlement to funds under this chapter except at the discretion of the authority in accordance with this chapter. Application shall mean a series of documents, forms, letters, statements, certifications, plans, studies, drawings, and other data and information required by the authority to be submitted within the deadlines and in the format prescribed by the authority and shall be accompanied or supplemented by drawings, plans, estimates of cost and proposals for defraying the costs or any additional information the authority may require, before construction is undertaken. The authority shall promulgate regulations establishing the procedural steps by which applications must be made and reviewed, and may at any time during the application process determine that the application does not warrant further consideration, pursuant to the priority criteria established in said sections 6, 8, and 9, and by the authority's regulations.

In the event that an eligible applicant undertakes construction before approval is obtained, the eligible applicant shall remain subject to the authority's approval process as if the construction were not undertaken. An eligible applicant who is eligible for aid under this chapter and establishes extended courses of instruction in a vocational school, as provided in section 37A of chapter 74, and wishes to enlarge or construct a school for the purpose of maintaining extended courses of instruction on a technical institute level shall be eligible to apply for financial assistance in the construction or enlargement of such school in the manner and to the extent provided by this chapter. If the authority invites an eligible applicant to apply, but is unable to approve the application due solely to the limit on total facilities grants established by section 7, at the request of the eligible applicant, the application shall be retained by the authority for 1 year and reviewed in the year immediately following the year of the application; provided that in said review, the project shall be ranked and evaluated using the priorities established by section 8 and if the application is not approved by the authority during the review, the applicant shall be required to submit a new application; provided, further, that the authority shall require a new application from an applicant seeking to make a substantial change in scope of the project which is the subject of the application subsequent to disapproval by the authority.

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, § 20, eff. July 26, 2004; St.2006, c. 122, § 30, eff. June 24, 2006.

§ 6. Examination of application by board of education; notice of approval or rejection

(a) Upon receipt of an application under section 5, from time to time, the authority may designate approved school projects. The authority shall examine forthwith the applications and any facts, estimates, or other information relative thereto, and shall make the following findings in order to designate a school project as an approved school project:

(1) The school project is in the best interests of the commonwealth and the eligible applicant, with respect to its site, type of construction, sufficiency of accommodations, open space preservation, urban development, urban sprawl, energy efficiency, and otherwise.

(2) The school project is necessary to meet educational standards of the curriculum frameworks established by the board of education pursuant to section 1E of chapter 69 for anticipated enrollment levels.

(3) The school project has a value over its useful life commensurate with the lifecycle cost of building, operating, and maintaining the project.

(4) The school project is not at a school that has been the site of an approved school project pursuant to this chapter or to chapter 645 of the acts of 1948 within the 10 years prior to the project application date, or the approved school project is unrelated to such previously approved project in the same school.

(5) The school project is within the capacity of the authority to finance within revenues projected

to be available to the trust, established pursuant to section 35BB of chapter 10.

(6) The commissioner of education has certified that adequate provisions have been made in the school project for children with disabilities, as defined in section 1 of chapter 71B, and, in the case of elementary facilities, that adequate provisions consistent with local policy have been made for all-day kindergarten, pre-kindergarten classes and for extended day programs; provided, however, that no district shall be required to adopt the classes or programs.

The authority shall also consider the availability of funds projected in the trust and other financial obligations of the authority, the authority's long term capital plan, the results of needs surveys, the order of priorities under section 8 and construction procedures and standards under section 9 and otherwise as prescribed by law and regulation. With respect to a regional school district, the authority shall also consider whether the school project represents an economy of scale that benefits the commonwealth and the municipalities of the region.

(b) Within a reasonable time after receipt of the application the authority shall notify the applicant of its approval or rejection thereof, and, in the event of its rejection, of the reasons therefor. Notice of approval hereunder shall be accompanied by a statement of the estimated approved cost as determined by the authority, and an estimate of the amount of total facilities grant to which the eligible applicant may be entitled under section 10.

(c) If the authority designates a school project to be an approved school project, the authority shall compute the estimated approved cost of the project, which cost may be equal to the estimated cost furnished by the eligible applicant or a lesser amount, and compute the amount estimated of facilities grant to which the applicant would be entitled under section 10, such computation being based on said approved cost. The final approved cost shall be determined by the authority within a reasonable time after the acceptance of the completed project by the local school committee. Final audits shall be conducted promptly by the authority. Final payments shall be determined based on the final approved cost.

(d) Any city, town or regional school district which has received, in accordance with subsections (b) and (c), notice of approval and an estimate of the amount of a school facilities grant, may borrow from time to time to finance that portion of the cost of the approved school project not being paid by such grant, in such amount approved by the board of selectmen, mayor or city manager of the city or town, or the regional district school committee of the regional school district, and may issue bonds or notes therefor which shall bear on their face the words —(name of city, town or regional school district) School Project Loan, chapter 70B. Each authorized issue shall constitute a separate loan, and the loans shall be paid in not more than 25 years from their dates or up to 30 years if consistent with the guidelines established in section 7 of chapter 44. Any city, town or regional school district which has received, in accordance with subsections (b) and (c), notice of approval and an estimate of the amount of a school facilities grant may issue and renew temporary notes. The authority shall issue regulations relative to issuance of temporary notes for school construction. Indebtedness incurred under this chapter shall be outside the statutory debt limit but shall, except as herein provided, be subject to chapter 44.

(e) A city, town or regional school district may borrow for a term of not more than 5 years for the cost of such feasibility studies as may be required to apply for a school facilities grant under this chapter.

Added by St.2000, c. 159, § 140. Amended by St.2001, c. 203, § 5; St.2003, c. 46, § 74, eff. July 31, 2003; St.2004, c. 208, § 21, eff. July 26, 2004; St.2006, c. 122, §§ 31, 32, eff. June 24, 2006; St.2008, c. 302, § 13, eff. Jan. 1, 2008; St.2009, c. 27, § 62, eff. July 1, 2009; St.2010, c. 188, § 56, eff. July 27, 2010.

§ 7. Limit on estimated amount of grants approved by authority

There shall be a limit on the estimated amount of grants approved by the authority during a fiscal year. For fiscal year 2008, the limit shall be $500,000,000. For each fiscal year thereafter, the limit shall be the limit for the previous fiscal year plus the lower of the rate of growth in the dedicated sales tax revenue amount, as defined in subsection (a) of section 35BB of chapter 10, or 4.5 per cent.

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, § 22, eff. July 26, 2004; St.2006, c. 139, § 47, eff. July 1, 2006.

§ 8. Order of priorities for approval of school projects and reimbursements; deferral of approval or disapproval of project applications

The authority shall approve school projects and reimbursements under this chapter in accordance with the following order of priorities:

(1) priority shall be given to school projects needed in the judgment of said board to replace or renovate a building which is structurally unsound or otherwise in a condition seriously jeopardizing the health and safety of school children, where no alternative exists;

(2) priority shall be given to school projects to eliminate existing severe overcrowding;

(3) priority shall be given to school projects needed in the judgment of said authority to prevent loss of accreditation;

(4) priority shall be given to school projects needed in the judgment of said authority to prevent severe overcrowding expected to result from increased enrollments which must be substantiated;

(5) priority shall be given to projects needed in the judgment of said authority for the replacement, renovation or modernization of the heating system in any schoolhouse to increase energy conservation and decrease energy related costs in said schoolhouse;

(6) priority shall be given to any school project needed in the judgment of said authority for short term enrollment growth;

(7) priority shall be given to school projects needed in the judgment of said authority to replace or add to obsolete buildings in order to provide for a full range of programs consistent with state and approved local requirements; and

(8) priority shall be given to projects needed in the judgment of said authority to transition from court-ordered and authority approved racial balance school districts to walk-to, so-called, or other school districts.

Notwithstanding the provisions of section 6, the authority may defer its approval or disapproval of any project application if such deferral is necessary for the effective implementation of the provisions of this section. The authority may issue regulations to define the procedures pursuant to which the priorities established by this section will be implemented. Notwithstanding the foregoing, the authority shall not approve any project for any school district which fails to spend in the year preceding the year of application at least 50 per cent of the sum of said school district's calculated foundation budget amounts for the purposes of foundation utility and ordinary maintenance expenses, and extraordinary maintenance allotment as defined in chapter 70, for said purposes. From fiscal year 1999 forward, no school district shall be approved for a project nor receive school facilities funds unless said district has spent at least 50 per cent of the sum of said district's calculated foundation budget amounts in each of the fiscal years including and succeeding fiscal year 1999. All projects which received first school building assistance payments prior to July 1, 2000 shall be exempted from the provisions of this paragraph. Upon a request of a school district, the authority may grant a waiver from said requirement for unanticipated or extraordinary changes in maintenance spending as determined by said departments including, but not limited to, the impact on said spending due to the opening of a new school building, the closing of an existing school building or the completion of a major renovation project.

Added by St.2000, c. 159, § 140. Amended by St.2002, c. 300, § 11; St.2004, c. 208, §§ 23, 24, eff. July 26, 2004.

§ 9. Cost effective production of efficient and creative school projects; standards and procedures; regulations

(a) In order to maximize the cost effective production of efficient and creative school projects, the authority shall require that every school project conform to standards and procedures as the authority considers appropriate including, not but limited to, the following: (1) that the applicant fully consider all available options for satisfying the described need, including tuition agreements with adjacent school districts, rental or acquisition and any necessary rehabilitation or usage modification of any existing building which could be made available for school use; (2) that the applicant's site selection is based on the cost and environmental factors, including an awareness of soil conditions and their probable effect on foundation and site development costs, transportation effects, dislocation of site occupants and relationship to other community facilities; (3) that the applicant enter into contracts, using forms satisfactory to the authority for such competent architectural, engineering and other services as may be required; and (4) that procedures satisfactory to the board are followed by the applicant throughout the planning and construction of the project such as will assure maximum attention to the operating and capital cost effects of program and design decisions, materials and systems selections.

(b) The authority shall issue annually, as hereinafter provided, maximum eligible cost standards and size standards for school projects. These standards may take into account the type and location

of a proposed school project and may also take into account the difficulty of siting school facilities in dense urban areas in which there exists a shortage of available municipally-owned sites and the increased cost of construction and major renovation in such urban areas. The program standards shall define prototype school design and space recommendations for each specified program activity eligible for state financial assistance. The program standards shall, in the judgment of the authority, be in conformity with the minimum requirements of state law and shall also reflect consideration of cost effects, prevailing educational standards in the commonwealth and the needs of efficient and creative school projects. The cost standards shall be based on the price experience of recently completed and recently bid school projects, taking into account the cost effectiveness of design, construction and programming techniques utilized in such school projects. For the purpose of calculating the total construction grant under section 10, the estimated approved cost and the final approved cost for a school project shall not exceed the cost that would result if the project conformed to prototype school standards. The provisions of this section shall not be deemed to preclude an eligible applicant from exceeding prototype school standard; provided, however, the cost of such additional facilities and design shall not be included in the estimated cost and final approved cost on the basis of which the state construction grant is calculated.

(c) On or before March 1 in each year, the authority shall adopt interim regulations, including minimum program standards and maximum cost standards, for the implementation of this section. Upon the adoption of such regulations, the authority shall forthwith file copies thereof with the clerk of the house of representatives who shall refer such regulations to an appropriate committee of the general court. Within 30 days after such filing, said committee may hold a public hearing on the regulations, shall issue a report, and file a copy thereof with the board. Said board shall adopt final regulations making such revisions in the interim regulations as it deems appropriate in view of such report and shall forthwith file a copy of the regulations with the chairperson of the committee of the general court to which the interim regulations were referred. Not earlier than 30 days after the date of such filing, the board shall file the final regulations with the state secretary and the said regulations shall thereupon take effect.

(d) A city, town, regional school district or independent agricultural and technical school shall not have entitlement to funds under this chapter except at the discretion of the authority in accordance with this chapter.

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, §§ 25 to 28, eff. July 26, 2004; St.2006, c. 122, § 33, eff. June 24, 2006.

§ 10. Facilities grants for approved projects; formula

The grant percentage for approved school projects shall be calculated based on the following formula, but no grant percentage shall be greater than 80 per cent.

(a) The percentage the commonwealth shall pay towards an approved school facilities project shall be determined by the following formula: Base Percentage (A) + Community Income Factor (B1) + Community Property Wealth Factor (B2) + Community Poverty Factor (B3) + Incentive Percentage (C).

(A) Base Percentage = 31 percentage points.

(B) Ability to pay percentage points (income/wealth factor) is determined as follows:

(1) Community Income Factor = per capita income, as determined by the department of revenue, for a municipality as a per cent of the statewide average per capita income.

The Community Income Factor is then determined by using the chart below.

Income

Municipality's per capita income as per cent of statewide average per capita income	Community income factor percentage points
0-9%	12.00
10-19%	11.37
20-29%	10.74
30-39%	10.11
40-49%	9.47
50-59%	8.84
60-69%	8.21
70-79%	7.58
80-89%	6.95
90-99%	6.32
100-109%	5.68
110-119%	5.05
120-129%	4.42
130-139%	3.79
140-149%	3.16
150-159%	2.53
160-169%	1.89
170-179%	1.26

Municipality's per capita income as per cent of statewide average per capita income	Community income factor percentage points
180-189%	0.63
190% +	0.00

(2) Community Property Wealth Factor = Equalized property valuation per capita as determined by the department of revenue, for the municipality as a per cent of the statewide average equalized property valuation per capita.

The Community Property Wealth Factor is then determined by using the chart below.

Equalized Property Valuation

Municipality's EQV as per cent of statewide average EQV	Community property wealth factor percentage points
0-9%	28.00
10-19%	26.53
20-29%	25.05
30-39%	23.58
40-49%	22.11
50-59%	20.63
60-69%	19.16
70-79%	17.68
80-89%	16.21
90-99%	14.74
100-109%	13.26
110-119%	11.79
120-129%	10.32
130-139%	8.84
140-149%	7.37
150-159%	5.89
160-169%	4.42
170-179%	2.95
180-189%	1.47
190% +	0.00

(3) Community Poverty Factor = Proportion of low income students, as determined by federal eligibility for free or reduced price lunch, for the district as a per cent of the statewide average proportion of low income students.

The Community Poverty Factor is then determined by using the chart below.

Poverty

School district proportion of low income students as per cent of state average proportion of low income students	Community poverty factor percentage points
0-99%	0.00
100-102%	1.42
103-105%	2.83
106-108%	4.25
109-111%	5.67
112-114%	7.08
115-117%	8.50
118-120%	9.92
121-123%	11.33
124-126%	12.75
127-129%	14.17
130-132%	15.58
133%+	17.00

(C) Incentive percentage points may be awarded by the authority. Incentive percentage points granted, if any, shall be in the sole discretion of the authority. The authority may issue regulations delineating the type and amounts of any such incentive percentage points; provided, however, that no individual category of incentive points shall exceed 6 additional points; and provided further, that no district shall receive more than 18 incentive percentage points. Such incentive points may be awarded for a district's use of efficient construction delivery methods; regionalization with other districts; superior maintenance practices of a district; energy efficient and sustainable design and construction; major renovation rather than building new construction; the use of model schools as adopted by the authority; and other incentives as determined by the board of the authority in order to encourage the most cost-effective and quality construction.

(b) In the case of regional school districts, B1 and B2 shall be determined by calculating the relationship to the statewide average for each municipality of the regional district as stated in this section. For purposes of this computation, each member city's and town's share of the total cost shall be determined by multiplying the total approved cost by the percentage of district or county capital costs that would be apportioned to such city or town in accordance with the applicable regional school district agreement or law for capital costs incurred in the fiscal year in which the grant is approved. The amount of the total capital costs apportioned to a member city or town in any fiscal year on account of an approved school project of a

regional school or county, determined in accordance with the applicable regional school district agreement or law, shall be reduced by an amount equal to the amount of the grant payable on account of such project in such fiscal year multiplied by a fraction the numerator of which is the city's or town's reimbursement percentage, determined as aforesaid, multiplied by the percentage of capital costs apportioned to the city or town for such fiscal year in accordance with the applicable regional school district agreement or law, and the denominator of which is the sum of the percentages so derived as the numerators for all of the member cities and towns.

In the case of independent agricultural and technical schools, B1 and B2 shall be determined by calculating the relationship to the statewide average for each municipality of the school as stated in this section. A weighted average will then be determined for these municipalities, weighted as compared to the number of students attending the school from each member municipality, which will be used to determine the final B1 and B2 factors.

(c) For approved school projects in districts which have a racial desegregation plan approved by the board of education not later than June 30, 2000, the reimbursement percentage shall be the sum of: (a) the percentage calculated pursuant to subsections (a) and (b); and (b) for projects designated as approved school projects on or before June 30, 2006, 10 percentage points, or, for projects designated as approved school projects on or before June 30, 2012, 5 percentage points. Only new project applications which present clear and convincing evidence that the proposed school building project will promote the objectives of achieving racial balance expressed in sections 37C and 37D of chapter 71 for the students attending the new, renovated, or repaired school will be eligible for the added percentage points. The total reimbursement percentage shall in no circumstances exceed the maximum grant percentage under the first paragraph of this section.

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, §§ 29, 33, 34, eff. July 26, 2004; St.2004, c. 208, §§ 30 to 32, eff. Aug. 1, 2005; St.2009, c. 27, §§ 63, 64, eff. July 1, 2009.

§ 11. Disbursement schedule

Grants for approved school projects shall be paid in accordance with a disbursement schedule approved by the authority.

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, § 35, eff. July 26, 2004.

§§ 12, 13. Repealed, 2004, 208, Sec. 36

§ 14. Approved alternative projects; allowable costs

For approved projects that are an alternative to construction or renovation, the authority shall establish eligible cost criteria, and on a case by case basis, shall determine the allowable cost of the project. Eligible costs may include but shall not be limited to furnishings and equipment, lease costs, rental fees, tuition costs and transportation costs. In no event shall an alternative project be reimbursed if it is determined by the authority to be more costly than construction necessary to achieve the same end.

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, § 37, eff. July 26, 2004.

§ 15. Sale or lease of school buildings for which school facilities project applicant receives grant payments

(a) In the event that an eligible applicant sells or leases an assisted structure or facility, or a portion of that structure or facility, on account of which it is receiving grant payments for an approved school project or, in the case of an approved school project approved on or after July 1, 2004, on account of which it has received at least 1 grant payment in the preceding 20 years, under this chapter or under chapter 645 of the acts of 1948, the sale or lease of the assisted structure or facility, or portion of that structure or facility, shall be for no less than fair market value as determined by independent appraisal, unless the eligible applicant receives prior written approval from the authority to do otherwise, and the proceeds from the sale or lease shall be divided between the authority and the general funds of the applicable eligible applicant in proportion to the commonwealth's and authority's prior investments in the assisted structure or facility under this chapter or said chapter 645, as applicable. In the case of an approved school project approved before July 1, 2004, the authority's share of the proceeds shall reduce the balance of outstanding grant payments that would otherwise be payable except for this section and shall not exceed that amount. An eligible applicant which sells, leases or otherwise removes from use by the eligible applicant as a schoolhouse an approved school project on account of which it is receiving grant payments or, in the case of an approved school project approved on or after July 1, 2004, on account of which it has received at least 1 grant payment in

the preceding 20 years, under this chapter or under said chapter 645, shall report the sale, lease or removal to the authority in the form and manner and within the time prescribed by the authority. The authority may issue regulations to recapture commonwealth and authority assistance for an approved school facilities projects for school buildings that are removed from service.

(b) In the event an eligible applicant sells or leases an assisted structure or if the assisted structure was not used as a schoolhouse for at least half of the preceding fiscal year, the amount of outstanding grant payments remaining after reductions under the provisions of subsection (a), shall be deducted from each city, town or regional school district's cherry sheets, so-called, as an assessment in accordance with the provisions of section 21 of chapter 59, according to a schedule agreed to between the city or town and the authority; provided, however, that at the discretion of the authority, deductions authorized from said cherry sheets under the provisions of this subsection may be waived for an assisted structure or facility which has been removed from use as a schoolhouse by a city, town or regional school district, pursuant to a plan approved by said city, town or regional school district and the authority, which provides for the reuse of the assisted structure or facility as a schoolhouse within two years of the adoption of the plan or prior to the expiration of the term of any bonds or notes issued to finance the project for which the grant was approved, whichever is the earliest.

Before the sale or lease of an assisted structure or facility or a portion of that structure or facility, the school district in control of the structure or facility shall submit to the authority a district-wide school facility use plan that shall include, but not be limited to, a listing of all school facilities under the control of the school district, a detailed description of both the current use and proposed use of each school facility, the most recent enrollment data, by school facility, then available to the school district, a detailed floor plan of each school facility that shows and labels each space in the facility and whether it is used as a classroom or has some other use and any other information that may be required by the authority to understand the district's school facility use plan. If the plan includes the closure, sale or lease of a school facility or any part of a school facility, the authority may conduct, with the full cooperation of the district, an analysis of district-wide enrollment capacity and future enrollment trends for the district. If the capacity analysis and enrollment projection indicate an extended period of significant excess capacity within the district's educational facilities, the district may, prior to consideration of any other disposition of the identified excess capacity, make a good faith offer to sell or lease at fair market value the identified excess capacity to a commonwealth charter school established pursuant to section 89 of chapter 71 or an applicant for a commonwealth charter school pursuant to said section 89 of said chapter 71 that serves or is seeking to serve students who live in the school district. The authority shall not recapture commonwealth and authority assistance for any such excess capacity that is sold or leased to a commonwealth charter school or applicant for a commonwealth charter school.

(c) Any eligible applicant which applies for a grant pursuant to this chapter and which has, prior to such application, sold, leased or otherwise removed from service any schoolhouse operated by said eligible applicant shall be eligible for such grant only if the board determines either that the grant is not for the purpose of replacing a schoolhouse sold, leased or otherwise removed from service in the past ten years or that the need for the project covered by the grant could not have reasonably been anticipated at the time that such schoolhouse was sold, leased or otherwise removed from service.

(d) The provisions of this section, at the discretion of the authority, shall not apply to sales or leases of such assisted structures or facilities for nonprofit public purposes.

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, §§ 38, 39, eff. July 26, 2004; St.2006, c. 122, § 34, eff. June 24, 2006; St.2010, c. 12, § 4, eff. Jan. 19, 2010.

§ 16. Maintenance assessment program for school buildings

The authority shall create a maintenance assessment program for school buildings. Such assessment program shall include a review of all major building components, maintenance records, existing staff and vendor contracts. The authority shall use such assessment program to issue ratings of the building conditions for each school district; survey current conditions, develop a model plan for the proper maintenance of school buildings, and provide technical assistance and information to municipalities and school districts.

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, § 40, eff. July 26, 2004.

§ 17. Annual report; anticipated needs for school facilities projects

(a) On or before June 30 of each year, the authority shall submit a report to the governor, the house and senate committees on ways and means, the joint committee on education, arts and humanities, the joint committee on natural resources, the house and senate committees on long-term debt and capital expenditures and the joint committee on local affairs which analyzes the anticipated financial needs for school facilities projects of the kind that qualify for assistance under this chapter. The report shall include a listing of each school building within the commonwealth, together with a description of its size, capacity, age and state of maintenance and whether it is likely to require construction, enlargement, reconstruction, rehabilitation or improvement due to such factors as deterioration, lack of adequate facilities to meet educational standards and anticipated increases in school-age population.

(b) The authority shall also conduct periodic surveys of the cities, towns and regional school districts to determine the need for new school facility construction to meet demand.

(c) The authority shall develop a long-term capital plan in accordance with needs and funding projected to be available in the trust under this chapter for purposes of planning and guiding the policies of the authority.

(d) The capital plans, needs surveys and reports of the authority shall not give rise to any claim, legal or moral, or enforceable right in any party to benefits or funds from the trust or from other sources.

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, § 41, eff. July 26, 2004.

§ 18. Repealed, 2004, 208, Sec. 36

§ 19. Notification of actual interest rate for bond issuance

Municipalities and school districts shall notify the authority no later than 14 days before refinancing any bond for which the municipality or district will receive state reimbursement under chapter 645 of the acts of 1948 or other law. The authority shall reimburse municipalities or districts at the actual interest rate obtained. The authority shall encourage municipalities and school districts to refinance any bond for which the municipality or district will receive state reimbursement where the refinancing would result in savings for the commonwealth or the municipality or school district and where the refinancing is otherwise in accordance with the law.

Added by St.2000, c. 159, § 140. Amended by St.2004, c. 208, § 42, eff. July 26, 2004; St.2006, c. 122, § 35, eff. June 24, 2006.

CHAPTER 71

PUBLIC SCHOOLS

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The section headings for the General Laws in this pamphlet have been editorially supplied

§ 1. Maintenance; double sessions; subjects; twelve-month school year

Every town shall maintain, for at least the number of days required by the board of education in each school year unless specifically exempted as to any one year by said board, a sufficient number of schools for the instruction of all children who may legally attend a public school therein. No town shall hold double sessions in any public school, if in any other public school of comparable grade levels in such town there are vacant spaces for more than thirty-five children, the number of such vacant spaces to be computed without exceeding a maximum of thirty-five children to a classroom. The board of education may suspend the application of the preceding sentence in a particular town for a limited period. Such schools shall be taught by teachers of competent ability and good morals, and shall give instruction and training in orthography, reading, writing, the English language and grammar, geography, arithmetic, drawing, music, the history and constitution of the United States,

the duties of citizenship, health education, physical education and good behavior. Instruction in health education shall include, but shall not be limited to: consumer health, ecology, community health, body structure and function, safety, nutrition, fitness and body dynamics, dental health, emotional development, safe and healthy relationships with a focus on preventing sexual and domestic violence and training in the administration of first aid, including cardiopulmonary resuscitation. The department of education shall pay for the cost of any such instruction in cardiopulmonary resuscitation; provided, however, that a school committee may by majority vote decide that such instruction shall not be offered. In connection with physiology and hygiene, instruction as to the effects of alcoholic drinks and of stimulants, including tobacco, and narcotics on the human system, as to tuberculosis and its prevention, as to detection and prevention of breast and uterine cancer, and as to fire safety, including instruction in the flammable qualities of certain fabrics, and as to the prevention and treatment of burn injuries, shall be given to all pupils in all schools under public control, except schools maintained solely for instruction in particular subject areas. The department of education is hereby directed in collaboration with the Massachusetts Center for Global Education, to establish a task force for the purpose of developing a model curriculum for grades kindergarten through twelve in global education and international studies. A copy of said curriculum shall be sent to the superintendent of schools for each school district in the commonwealth. The department shall encourage each school district to implement said curriculum, or a variation thereof. No pupil shall be required to take or participate in instruction on disease, its symptoms, development and treatment, whose parent or guardian shall object thereto in writing on the grounds such instruction conflicts with his sincerely held religious beliefs, and no pupil so exempt shall be penalized by reason of such exemption. Such other subjects as the school committee considers expedient may be taught in the public schools. The board of education shall adopt rules and regulations for the establishment of a twelve-month school year. Any city, town or school district by vote of its school committee may maintain and operate on a continuous twelve-month basis a sufficient number of schools for the instruction of all children who may legally attend a public school therein in accordance with such rules and regulations. Nothing herein contained shall be construed as to authorize said board to require the establishment of a twelve-month school year in any city, town or school district the school committee of which has not voted to establish, maintain and operate such a twelve-month school year.

The advisory council on violence prevention established by section 1G of chapter 15 shall recommend for approval by the board of education a model curriculum for grades kindergarten through 12 in education programs on violence prevention for the purpose of informing students of the harmful effects of teenage violence, weapons and illegal drug use and of promoting community and social responsibility. The department of education shall send a copy of said curriculum to the superintendent of schools for each school district in the commonwealth. The department shall encourage school districts to implement said curriculum or a variation thereof.

Amended by St.1953, c. 137; St.1962, c. 11; St.1962, c. 301, § 1; St.1965, c. 572, § 14; St.1966, c. 187; St.1971, c. 922, § 1; St.1972, c. 66; St.1973, c. 651; St.1974, c. 753; St.1977, c. 408; St.1977, c. 916; St.1990, c. 355, § 1; St.1998, c. 422; St.2010, c. 256, § 60, eff. Nov. 4, 2010.

Historical and Statutory Notes

C.L. c. 136, § 305.
St.1692–3, c. 26, § 5.
St.1789, c. 19, § 1.
St.1823, c. 111.
St.1826, c. 143, § 1.
R.S.1836, c. 23, § 1.
St.1839, c. 56, § 1.
St.1850, c. 229.
St.1857, c. 206, § 1.
St.1858, c. 5.
St.1859, c. 263.
G.S.1860, c. 38, § 1.
St.1862, c. 7.
St.1870, c. 248, § 1.
St.1876, c. 3, § 1.
P.S.1882, c. 44, § 1.
St.1884, c. 69.
St.1885, c. 332.
St.1894, c. 231.
St.1894, c. 320, § 1.
St.1898, c. 496, § 1.
St.1900, c. 218.
R.L.1902, c. 42, § 1.
St.1908, c. 181.
St.1910, c. 524.
St.1911, c. 247.
St.1917, c. 169.
St.1918, c. 257, § 174.
St.1919, c. 5.
St.1919, c. 350, § 56.
St.1920, c. 2.
St.1921, c. 360.
St.1923, c. 222, § 1.

§ 1A. Period of silence

At the commencement of the first class of each day in all grades in all public schools the teacher in charge of the room in which each such class is held shall announce that a period of silence not to exceed one minute in duration shall be observed for personal thoughts, and during any such period, silence shall be maintained and no activities engaged in.

Added by St.1966, c. 130. Amended by St.1973, c. 621; St.1979, c. 692; St.1980, c. 144; St.1985, c. 690.

§ 1B. Voluntary prayer

The school committee of any city or town may permit any child attending its public schools to participate in voluntary prayer with the approval of such child's parents before the commencement of each daily school session. Notwithstanding any provision of law to the contrary, no city or town which permits such prayer shall be denied any funds for school purposes to which it may be entitled from the commonwealth.

Added by St.1970, c. 264.

§ 1C. Workshops on rights of students and their parents under special education laws of the commonwealth and the federal government

Each school district shall conduct, in cooperation with the local parent advisory council, at least one workshop annually within the school district on the rights of students and their parents and guardians under the special education laws of the commonwealth and the federal government and shall make written materials explaining such rights available upon request.

Added by St.2000, c. 159, § 141.

§ 2. Subjects of instruction; history and civics

In all public elementary and high schools American history and civics, including the constitution of the United States, the declaration of independence and the bill of rights, and in all public high schools the constitution of the commonwealth and local history and government and a program relating to the flag of the United States of America, including, but not limited to, proper etiquette, the correct use and display of the flag, the importance of participation in the electoral process and the provisions of 36 U.S.C. 170 to 177, inclusive, shall be taught as required subjects for the purpose of promoting civic service and a greater knowledge thereof, and of fitting the pupils, morally and intellectually, for the duties of citizenship.

Amended by St.1938, c. 246, § 1; St.1949, c. 468; St.1952, c. 282; St.2010, c. 12, § 5, eff. Jan. 19, 2010.

Historical and Statutory Notes

St.1920, c. 411.
St.1923, c. 222, § 2.

§ 2A. Student use of tobacco products

It shall be unlawful for any student, enrolled in either primary or secondary public schools in the commonwealth, to use tobacco products of any type on school grounds during normal school hours.

Each school committee shall establish a policy dealing with students who violate this law. This policy may include, but not be limited to, mandatory education classes on the hazards of tobacco use.

Added by St.1987, c. 641, § 1.

§ 2B. Courses in American sign language

In all public elementary and secondary schools, American Sign Language shall be recognized as a standard, independent language with its own grammar, syntax, vocabulary, and cultural heritage. Courses in American Sign Language may be taught for the purpose of contributing to a greater understanding of the social and cultural dimensions of the language, and to encourage and enable increased interaction between hearing persons and deaf and hard-of-hearing persons in society. School committees may credit such courses toward satisfaction of foreign language requirements.

Added by St.1989, c. 95.

§ 2C. Implementation of policy and discipline code addressing teen dating violence in public schools

Each school district in the commonwealth, subject to appropriation, shall implement a specific policy and discipline code to address teen dating violence in public schools. The policy shall clearly state that dating violence will not be tolerated and shall include guidelines for addressing alleged incidents of dating violence. The policy may include a teen dating violence prevention task force comprised of staff, students and parents to provide awareness training and education for the school community. Topics to be covered in the policy include, without limitation, defining the issue of teen dating violence, recognizing warning signs,

identifying issues of confidentiality, safety and appropriate legal school-based interventions.
Added by St.2010, c. 256, § 61, eff. Nov. 4, 2010.

§ 3. Physical education

Physical education shall be taught as a required subject in all grades for all students in the public schools for the purpose of promoting the physical well-being of such students. Instruction in physical education may include calisthenics, gymnastics and military drill; but no pupil shall be required to take part in any military exercise if his parent or guardian is of any religious denomination conscientiously opposed to bearing arms, or is himself so opposed, and the school committee is so notified in writing; and no pupil shall be required to take part in physical education exercises if a licensed physician certifies in writing that in his opinion such physical education exercises would be injurious to the pupil.
Amended by St.1962, c. 301, § 2; St.1966, c. 150; St.1979, c. 81.

Historical and Statutory Notes

St.1826, c. 143, § 7.
R.S.1836, c. 23, § 17.
G.S.1860, c. 38, § 28.
St.1876, c. 47, § 1.
St.1881, c. 193, § 1.
P.S.1882, c. 44, § 33.
R.L.1902, c. 42, § 34.
St.1910, c. 201.
St.1919, c. 292, § 7.

§ 4. High schools; maintenance; diplomas awarded to veterans

Every town containing, according to the latest federal census, five hundred families or householders, shall, unless specifically exempted by the board of education and under conditions defined by it, maintain a high school, adequately equipped, which shall be kept by a principal and such assistants as may be needed, of competent ability and good morals, who shall give instruction in such subjects as the school committee considers expedient. One or more courses of study, at least four years in length, shall be maintained in such high school and it shall be kept open for the benefit of all inhabitants of the town for at least the number of days required by said board, exclusive of vacations, in each school year; provided, however, that the date of graduation from such high school may precede the regular closing date of the school by not more than twelve school days. A school committee may determine that such school shall be conducted for less than the number of days required by said board in any year during which school has been closed because of epidemic, extraordinary weather conditions dangerous to the health or safety of pupils or other emergency, subject, however, to the provisions of section four A. Each high school maintained by a town required to belong to a superintendency union shall be conducted in accordance with standards of organization, equipment and instruction approved, from time to time, by the board.

Notwithstanding any general or special law to the contrary, school committees may award diplomas to any World War II veteran, Korean War veteran or Vietnam War veteran as defined in clause Forty-third of section 7 of chapter 4, who is a resident of the commonwealth, who attended the high school maintained by the school committee, who withdrew from secondary school before graduation in order to serve in the armed forces of the United States, who did not receive a high school diploma as a consequence of that service, and who was honorably discharged from the armed services. The department of education and the department of veterans' services shall jointly promulgate guidelines for the identification of eligible veterans by school districts and for the awarding of the diplomas by school committees.

Family members of deceased veterans, who otherwise are eligible to apply for the diplomas, may apply for a diploma for the veteran posthumously under the same guidelines set forth by the department of education and department of veterans services.

Amended by St.1953, c. 260; St.1955, c. 109; St.1963, c. 530, § 1; St.1965, c. 572, § 15; St.1972, c. 100, § 1; St.1992, c. 403, § 20; St.2005, c. 130, § 8, eff. Nov. 11, 2005.

Historical and Statutory Notes

St.1789, c. 19, § 1.
St.1823, c. 111.
St.1826, c. 143, § 1.
R.S.1836, c. 23, § 5.
St.1850, c. 274.
St.1852, c. 123.
St.1857, c. 206, § 2.
G.S.1860, c. 38, § 2.
St.1868, c. 226.
P.S.1882, c. 44, § 2.
St.1898, c. 496, § 2.
R.L.1902, c. 42, § 2.
St.1914, c. 556.
St.1918, c. 257, § 175.
St.1919, c. 5.
St.1920, c. 2.
St.1928, c. 31.

§ 4A. Failure to keep schools open for required period; penalty

Every town which, without having received a specific exemption from the board of education, fails to keep open all schools required to be maintained under sections one and four or fails to provide school facilities under section six for grade nine through twelve, the number of days required by said board in each school year shall have deducted from the sum of school aid payable to it under chapter seventy an amount equal to the proportion which the number of such days during which schools were not kept open bears to the total number of days required that they be kept open by said board.

Added by St.1963, c. 530, § 2. Amended by St.1965, c. 572, § 16; St.1969, c. 254, § 5.

§ 5. Repealed, 1948, 643, Sec. 2

§ 6. Education in out-of-town high schools

If a town of less than five hundred families or householders, according to such census, does not maintain a public high school offering four years of instruction, it shall pay the tuition of any pupil who resides therein and obtains from its school committee a certificate to attend a high school of another town included in the list of high schools approved for this purpose by the department. The department shall approve the high schools which may be attended by such pupils, and it may, for this purpose, approve a public high school in an adjoining state. Whenever, in the judgment of the department, it is expedient that such a pupil should board in the town of attendance the town of residence may, through its school committee, pay toward such board, in lieu of transportation, such sum as the said committee may fix.

If the school committee refuses to issue a certificate as aforesaid, application may be made to the department, which, if it finds that the educational needs of the pupil in question are not reasonably provided for, may issue a certificate having the same force and effect as if issued by the said committee. The application shall be filed with the superintendent of schools of the town of residence, and by him transmitted forthwith to the department with a report of the facts relative thereto.

Amended by St.1947, c. 679, § 4; St.1998, c. 463, § 58.

Historical and Statutory Notes

St.1891, c. 263.
St.1894, c. 436, § 1.
St.1898, c. 496, § 3.
R.L.1902, c. 42, § 3.
St.1902, c. 433.
St.1911, c. 537.
St.1913, c. 396.
St.1918, c. 198, §§ 3, 8.
St.1921, c. 296, § 1.
St.1930, c. 48.

§ 6A. Admission of students from outside Commonwealth

Any city, town, or regional school district, acting through its school committee, may, if the school committee finds it has adequate space, accept in any of its schools, including vocational schools, any pupil who resides outside the commonwealth and may contract with the parent or guardian of the pupil, or, if the school committee of the city or town where the child resides, is authorized by law to so contract, with such school committee, for the admission of the pupil into its school system and for a tuition charge which shall in no case be less than the average expense per pupil in such school for the period of attendance. The school committee may vote to waive all or part of such tuition charge.

Added by St.1963, c. 9. Amended by St.1970, c. 246, § 1; St.1998, c. 463, § 59.

§ 7. Repealed, 1947, 679, Sec. 5

§ 7A. Transportation of pupils; payment of costs; limitations

The state treasurer shall annually, on or before November twentieth, pay to the several towns subject to appropriation, the sums required as reimbursement for expenses approved by the commissioner of education, incurred by any town for the transportation of pupils not more than twice daily between any school within the town, or in another town, and the pupil's home, a child care center licensed or approved by the department of early education and care, or a child care facility which is part of a public school system or a private, organized educational system, in accordance with standards approved by the school committee, in excess of five dollars per annum per pupil in the net average membership of such town; provided, however, that (a) no reimbursement for transporting a pupil between school and home shall be made on account of any pupil who resides less than one and one-half miles from the school which he attends, measured by a commonly traveled route; (b) no reimbursement for transporting a pupil between school and a child care center licensed or approved by the department of early education and

care, or a child care facility which is part of a public school system or a private, organized educational system, shall be made if the distance between the school and said facility is less than one and one-half miles, measured by a commonly traveled route, nor for transportation to a day care facility located outside the boundaries of the school district; (c) the amount of grant, per pupil, for transportation to private schools in towns which furnish such transportation, shall not exceed the amount of grant per pupil for transportation to public schools; (d) no contract shall be awarded except upon the basis of prevailing wage rates, as hereinafter provided, and of competitive sealed bids pursuant to chapter thirty B; and (e) no reimbursement for transporting a pupil between school and home shall be made to a school system which does not certify to the department of education in a manner prescribed by the department that the average number of students transported over a period of an academic year does not equal or exceed seventy-five percent of the carrying capacity of the bus or other transportation system used by said school system; provided, however, that this section shall not apply to any school district which is, or has been, subject to the provisions of a court-ordered busing program. Nothing in this paragraph shall be construed to mean that, with the consent of a pupil's parent or guardian, a school committee is in any way prohibited from providing transportation for a pupil to any location. No expense incurred by a town for the transportation of pupils shall be approved by the commissioner for the purpose of such reimbursement, if it appears to him, after diligent inquiry, that such expense has been incurred for transportation for which reimbursement is not authorized hereunder or has been incurred pursuant to any contract awarded in violation of any provision of this section or of section four of chapter forty. The department shall advise and assist the school committees of the several towns relative to the transportation of pupils at the lowest cost commensurate with their safety, including the planning of routes and the selection and use of equipment.

Prior to awarding a contract, the school committee in a city or in a town having a population of sixteen thousand or over shall request the commissioner of labor and industries to determine the rate of wages to be paid to each person to be employed by the bidder under said contract, and shall forward to the commissioner a list of jobs to be performed under the contract. The commissioner shall proceed forthwith to determine the same, and shall furnish said school committee with a schedule of such rate or rates of wages. The determined rate per hour of said wages to be paid to each person employed by the bidder in cities and towns outside of the Massachusetts Bay Transportation Authority shall not be less than those established by collective bargaining agreements or understandings between organized labor and employers in such city or town for operators of motor buses; provided, however, that collective bargaining agreements or understandings pertaining to services to be provided under contract with any regional transit authority shall not be included in said determination; and provided, further, that in cities or towns where such rate or rates have been so established, the wages determined shall not be less than the wages for that type of employment by such bidders. The determined rate per hour of said wages to be paid to each person employed by the bidder in cities and towns within said authority shall not be less than the mean average of those wages established by collective agreements or understandings, relative to the transportation of pupils, between organized labor and employers in the commonwealth for operators of motor buses used solely for the transportation of pupils; provided, that in cities or towns where such rates have been so established, the wages determined shall not be less than the wages paid for that type of employment by such bidders.

Whoever pays or agrees to pay less than said rate or rates of wages to any person performing work within the schedule and whoever, for himself, or as representative, agent or officer of another person, accepts as a rebate, refund or gratuity, or in any other guise, any part or portion of the wages paid to any such person for work done or service rendered under said contract, shall be punished by a fine of not less than one hundred nor more than five hundred dollars. Whoever is convicted of a second violation of this paragraph shall be prohibited from contracting, directly or indirectly, with any city or town for a period of two years from the date of such conviction.

In advertising for or inviting bids, said school committee shall incorporate said schedule in the advertisement or invitation by an appropriate reference thereto, and shall furnish a copy of said schedule, without cost, to any person requesting the same. Said schedule shall be made a part of the contract, and shall continue to be the minimum rate or rates of wages during the life of the con-

tract. The bidder shall cause a copy of said schedule to be kept posted in a conspicuous place during the life of the contract.

No town shall be reimbursed for its transportation expense, in any year, an amount less than the amount of reimbursement for such expense received in the year nineteen hundred and forty-six.
Added by St.1947, c. 679, § 1. Amended by St.1949, c. 754; St.1962, c. 729, §§ 1, 2; St.1963, c. 539; St.1966, c. 14, §§ 47, 48; St.1976, c. 286, § 1; St.1981, c. 310; St.1987, c. 767, § 1; St.1989, c. 687, § 20; St.1991, c. 138, § 335; St.1992, c. 286, § 147; St.2008, c. 215, § 54, eff. July 31, 2008.

§ 7B. Transportation of pupils; reimbursement of costs; determination of amount; use of funds

To provide for the reimbursement of part of the cost not reimbursable under section seven A incurred directly by a school department or indirectly by a city or town on account of an assessment made to meet the cost of maintaining a public transportation system used for the transportation of pupils in a city or town using public transportation facilities licensed under the provisions of sections one and seven of chapter one hundred and fifty-nine A or operated under the provisions of chapter one hundred and sixty-one A or chapter one hundred and sixty-one B for the transporting of pupils to and from school who reside more than one and one half miles from the school they attend as determined by the commissioner, or, if the determination of the number of pupils residing more than one and one half miles from the school of attendance is impracticable, the commissioner shall make such determination according to the following formula: From the net average membership in the public and private schools, determined as provided in section five of chapter seventy, the commissioner shall estimate the number of pupils who reside more than one and one half miles from the school they attend, which number shall not exceed ten per cent of said net average membership.

The commissioner shall on or before November first of each year, certify to the commissioner of revenue a transportation allowance payable to such city or town for the preceding school year, the amount of such allowance to be determined by him by multiplying the number of pupils or the estimated number of pupils residing more than one and one half miles from the school by the average cost per pupil in the city or town for transporting all such pupils; provided that such cost shall not exceed twenty cents per pupil per day.

Funds received by each city or town shall be used to pay the cost of providing public transportation or to reimburse a city or town for payments on account of any assessment made upon it to meet the cost of maintaining a public transportation system, provided that notwithstanding the provisions of this section, no amount shall be approved as a reimbursement by the commissioner as herein provided in excess of the amount to be paid by such a city or town for said public transportation.
Added by St.1964, c. 563, § 8. Amended by St.1973, c. 1141, § 5; St.1978, c. 514, § 188; St.1998, c. 463, § 60.

§ 7C. Bus transportation programs; financial assistance

No financial assistance shall be provided by the commonwealth for the purchase of buses or the operation thereof to any applicant for such assistance unless such applicant and the secretary of transportation and construction shall have first entered into an agreement that such applicant will not engage in school bus operations, exclusively for the transportation of students and school personnel, in competition with private school bus operators. This section shall not apply to an applicant with respect to operation of a school bus program if the applicant operates a school system in the area to be served and operates a separate and exclusive school bus program for this school system. This section shall not apply unless private school bus operators are able to provide adequate transportation at reasonable rates, and in conformance with applicable safety standards.
Added by St.1976, c. 518, § 1.

§§ 8, 9. Repealed, 1948, 643, Sec. 2

§ 10. Expenses of physically disabled children

If the school committee of a town of less than five hundred families or householders not maintaining a public high school offering four years of instruction, pays, with the approval of the department, for the instruction of a pupil who by reason of physical disability is unable to attend a high school in another town, the commonwealth shall reimburse the town therefor under the same conditions and to the same amount as for tuition in such a high school, and for transportation thereto, but not exceeding one hundred dollars a year in lieu of

tuition plus one dollar and fifty cents per week of actual instruction in lieu of transportation.

Historical and Statutory Notes

St.1918, c. 198, § 7.

§ 11. High school; definition

For the purposes of the six preceding sections, a "high school" is defined as that part of the school system which furnishes instruction in addition to that offered in the first eight grades and other than vocational instruction directly aided by the commonwealth.

Historical and Statutory Notes

St.1918, c. 198, § 1.

§ 12. Repealed, 1969, 254, Sec. 6

§ 13. Requested courses; school committee approval

In every public school having not less than one hundred and fifty pupils, any course not included in the regular curriculum shall be taught if the parents or guardians of not less than thirty pupils or of a number of pupils equivalent to five per cent of the pupil enrollment in the high school, whichever is less, request in writing the teaching thereof; provided that said request is made and said enrollment is completed before the preceding August first; provided, further, a qualified teacher is available to teach the course; and provided, further, that the approval and implementation of said course is voted by two-thirds or more of the full membership of the school committee. The teaching of any course as provided by this section may be discontinued if the enrollment of pupils falls below fifteen. Such courses as may be taught under this section shall be given the same academic credit necessary for a high school diploma as is given to similar courses taught in said public high school, provided that the school committee shall make a determination as to the credit equivalency of such course prior to its being offered. Amended by St.1972, c. 215, § 1; St.1973, c. 111; St.1975, c. 305; St.1979, c. 259; St.1981, c. 662.

Historical and Statutory Notes

St.1918, c. 200.

§§ 13A to 13C. Repealed, 1972, 215, Sec. 2

§ 13D. High schools; required subjects; driver training

Motor vehicle driving education may be incorporated as a phase of the safety education program in high schools of the commonwealth. The content of driver education courses shall be established by the registrar of motor vehicles. No school committee and no high school, public or private, shall employ a person to conduct a driver education course unless the person is certified by the registrar as a driving instructor. Courses in motor vehicle driver education may be given as evening courses in the schools of any town for the training of persons under twenty-five years of age. No person shall be precluded from taking any such course because he is licensed to operate motor vehicles. School committees may fix reasonable fees for tuition in such evening courses or may provide that no fee shall be charged. If a motor vehicle driver education course is required pursuant to the provisions of section thirteen such courses shall consist of classroom and behind-the-wheel training; provided, however, that no school committee shall be required to include behind-the-wheel training during the regular school day as part of such course.

The front seats of motor vehicles used for driver education under this section shall be equipped with safety belts for the instructor and the pupil.

A driver education course shall include a motorcycle awareness program module, as approved by the Motorcycle Safety Foundation, to ensure that new operators of motor vehicles have some knowledge and awareness of motorcycles on roadways for the safety of motorcyclists. Two dollars from each motorcycle registration fee paid under section 34 of chapter 90 shall be used to fund the cost of the required materials for the motorcycle awareness program module required by this section.
Added by St.1948, c. 205. Amended by St.1954, c. 49; St.1963, c. 349, § 1; St.1967, c. 111; St.1978, c. 456, § 1; St.2004, c. 126, § 1, eff. Sept. 8, 2004; St.2006, c. 428, § 1, eff. Jan. 3, 2007.

§ 13E. Repealed, 1972, 215, Sec. 2

§ 13F. Broadcast and television facilities; cost of program; executive committee for educational television

The course of study in elementary and high schools may include instruction by means of educational programs broadcast through the facilities of television stations. The cost of such programs may be shared by cities and towns within viewing range of such television stations and the school committee of each such city or town may include within its budget such funds not to exceed one dollar per pupil enrolled in public elementary and

high schools in such city or town, for the payment thereof as it may deem advisable. The state treasurer shall annually, on or before November twentieth, reimburse each city or town which has shared the cost of such programs, as evidenced by the written agreement of each such city or town with the executive committee for educational television, a sum equal to fifty per cent of the total share paid by such city or town for the then current fiscal year. Said reimbursement shall be subject to appropriation and shall not exceed a total reimbursement to the several such cities or towns of more than two hundred and fifty thousand dollars. Other educational agencies may participate in this program by a financial contribution. The board of education, with the advice of the commissioner, shall appoint a committee to co-ordinate and administer such programs. Said committee shall be known as the executive committee for educational television, in this section and sections thirteen G to thirteen *I*, inclusive, called the committee. The committee shall consist of twelve members, of whom at least seven shall be representatives of contributing school systems. As the term of office of a member expires his successor shall be appointed in like manner for a term of four years. The members of the committee shall serve without compensation, except that they may be reimbursed for their necessary expenses actually incurred in the performance of their duties.

Added by St.1957, c. 709. Amended by St.1960, c. 567, § 1; St.1971, c. 1115.

§ 13G. Executive committee for educational television; rules and regulations; personnel

Subject to the approval of the board of education, the executive committee for educational television shall act in matters pertaining to educational television. Said committee may adopt rules for the conduct of its business. A majority of the members shall constitute a quorum for the transaction of business. Said committee shall recommend to said board of education the appointment of such professional personnel as is necessary to carry on the work of the committee, and may recommend the appointment of such clerical, engineering, legal, or other assistants as it deems necessary, provided, however, that no obligation shall be incurred for the payment of salaries or other compensation to any such employee, except from available funds appropriated to the board of education by the general court or from such other funds as may be held in trust by the said committee.

Added by St.1960, c. 567, § 1.

§ 13H. Educational television program fund; accounts and reports

The committee may establish and manage under such regulations as it may from time to time prescribe, a trust fund to be known as the Educational Television Program Fund. All funds received from school committees, organizations, or individuals for the purposes of sections thirteen F to thirteen I, inclusive, shall be credited to said Fund and shall be deposited in the state treasury and may be expended by the committee for such purposes without appropriation; provided, that no obligation shall be incurred for any expenditure in excess of sums available therefor.

The committee shall cause accurate accounts to be kept at all times of all receipts and expenditures of funds received by it, and shall make a report of the same annually in December to the board of education.

Added by St.1960, c. 567, § 1.

§ 13*I*. Executive committee for educational television; powers and duties

In order to carry out its duties, said committee, from time to time and within the limits of appropriation therefor and of available trust funds, may—

(a) Acquire, construct, hold, lease and dispose of real and personal property;

(b) Prepare programs, enter into agreements providing for the furnishing of programs, and the disposition thereof within and without the commonwealth, equipment, assistance and personnel; purchase broadcast time; and enter into other contracts;

(c) Obtain assistance from, and co-operate with others, including, without restriction, institutions of learning and groups interested in television broadcasting;

(d) Hold and administer real and personal property, and money given, whether outright or in trust; and

(e) Do all acts and things necessary or convenient to carry out the purposes for which the committee is created.

Said committee shall not provide or sponsor any program which advertises a commercial product or

service, or any program wherein any denominational religious doctrine is inculcated, or any programs founding, maintaining or aiding any church, religious denomination or society, providing that nothing in this section shall be construed as preventing the furtherance of belief in a Supreme Being, nor shall any programs designed to aid any political party or candidate for public office be permitted.

Added by St.1960, c. 567, § 1.

§ 14. Regional school district planning committee; creation; membership

Any town, by vote in town meeting duly called therefor, may create a special unpaid committee to be known as a regional school district planning committee, to consist of three members, including one member of the school committee, to be appointed by the moderator; and may at the same meeting or at a subsequent meeting appropriate for the expense of said committee such sum or sums, not exceeding one tenth of one per cent of the assessed valuation of such town in the preceding year, as it may deem necessary. Regional school district planning committees from any two or more towns may join together to form a regional school district planning board or boards. Such regional school district planning board shall organize forthwith upon its formation by the election of a chairman and secretary-treasurer.

Added by St.1949, c. 638, § 1. Amended by St.1951, c. 331, § 1.

Historical and Statutory Notes

St.1848, c. 279, §§ 1 to 4.
G.S.1860, c. 38, §§ 3 to 6.
P.S.1882, c. 44, §§ 3 to 6.
R.L.1902, c. 42, §§ 4 to 7.
St.1918, c. 257, §§ 176, 177.
St.1919, c. 5.
St.1919, c. 292, § 1.
St.1920, c. 2.

§ 14A. Duties of planning board

It shall be the duty of the regional school district planning board to study the fiscal and educational advisability of establishing a regional school district, its organization, operation and control, and of constructing, maintaining and operating a school or schools to serve the needs of such district; to estimate the construction and operating costs thereof; to assess the educational soundness of establishing such school or schools, to investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of a regional school district; and to submit a report of its findings and recommendations to the selectmen of the several towns.

Added by St.1949, c. 638, § 1. Amended by St.1951, c. 331, § 2; St.1995, c. 38, § 98.

§ 14B. Regional school districts; formation; procedure

The said regional district planning board may recommend that there shall be established a regional school district which may include all the towns represented by its membership, or alternatively, any specified combination of such towns. If the said regional district planning board so recommends, it shall submit a proposed agreement or agreements setting forth as to each alternative recommendation, if such be made, the following:—

(a) The number, composition, method of selection, and terms of office of the members of the regional district school committee.

(b) The town or towns in which, or the general area within the regional school district where, the regional district school or schools are to be located.

(c) The type of regional district school or schools. Without limiting the generality of the foregoing, the type of regional school may, if it is so stated in the agreement, consist of a vocational school or schools offering such kinds of education as may be provided by towns under the provisions of chapter seventy-four; and any other type of regional school may, if it is so stated in the agreement, offer said kinds of education. A town may simultaneously be a member of a vocational regional school district and any other type of regional school district provided, however, that when a vocational school district is in operation, no member town of such district, and no other type of regional school district of which such a town is a member shall, without the approval of the commissioner of education, offer the same kinds of education as offered by said vocational school district.

(d) The method of apportioning the expenses of the regional school district, and the method of apportioning the costs of school construction, including any interest and retirement of principal of any bonds or other obligations issued by the district among the several towns comprising the district, and the time and manner of payment of the shares of the several towns of any such expense.

(e) The method by which school transportation shall be provided, and if such transportation is to be furnished by the district, the manner in which the expenses shall be borne by the several towns.

(f) the terms by which any city or town may be admitted to or separated from the regional school district; provided, however, that in the case of admission such terms shall not be inconsistent with the provisions of section sixteen of chapter six hundred and forty-five of the acts of nineteen hundred and forty-eight.

(g) The method by which the agreement may be amended.

(h) The detailed procedure for the preparation and adoption of an annual budget.

(i) Any other matters, not incompatible with law, which the said board may deem advisable.

Copies of such agreement shall be submitted to the department of education, and subject to its approval, to the several towns for their acceptance.

Added by St.1949, c. 638, § 1. Amended by St.1951, c. 331, § 3; St.1952, c. 471, § 1; St.1955, c. 142, § 1; St.1960, c. 650, § 1; St.1984, c. 388, § 2; St.1987, c. 746, § 1; St.2003, c. 46, § 75, eff. July 31, 2003.

§ 14C. Lease or sale of property to regional school districts

The agreement made under section fourteen B, or any amendment to such an agreement, may contain provisions authorizing any member town to sell, lease or grant a license to use any school building and any land appurtenant thereto or used in connection therewith to the regional school district, and any such town may authorize such sale, lease or license accordingly, notwithstanding the provisions of section three of chapter forty or any other provisions of law to the contrary. In case of a sale, the price and time or times of payment and the method by which the towns other than the selling town shall be assessed for such payment shall be set forth in the agreement or amendment; but in no case shall payments be made which shall extend over a period in excess of twenty years. In the case of a lease or license to use, the rental or license fee and terms of payment and assessment shall be set forth in the agreement or amendment. The lease or license to use may be for a term or period not in excess of twenty years, and may contain provisions for the extension of the lease or license to use for an additional term or period not in excess of twenty years, at the option of the regional district school committee.

Added by St.1954, c. 214. Amended by St.1955, c. 58; St.1955, c. 127, § 1.

§ 14D. Agreement; approval of indebtedness

The agreement made under section fourteen B, or any amendment to such an agreement, may provide that the incurring of indebtedness by the district shall be approved by the registered voters in the member towns pursuant to the provisions of clause (n) of section sixteen. In any district for which the agreement does not so provide, the incurring of indebtedness shall be subject to disapproval by any member town pursuant to the provisions of clause (d) of said section sixteen. Notwithstanding the provisions of this section, the regional district school may, by vote of two-thirds of all its members, require that the approval of any particular authorized issue of indebtedness shall be by the registered voters of the member towns of the district pursuant to the provisions of clause (n) of section sixteen rather than pursuant to the provisions of clause (d) of said section sixteen.

Added by St.1968, c. 376, § 1. Amended by St.1995, c. 38, § 99.

§ 14E. Regional school district committee membership options

A regional school district may, by amendment to its regional school district agreement, provide for one of the following options concerning the members of its regional district school committee: (1) electing committee members by voters in member communities with each community's representation apportioned according to population; (2) electing members in district-wide elections to be held at the biennial state elections; (3) electing members with residency requirements in district-wide elections to be held at the biennial state elections; (4) weighing the votes of committee members according to the population they represent; and (5) appointing committee members by locally elected officials such as school board members. Each regional school district shall designate an individual to serve as district clerk.

If a regional school district decides to elect members in district-wide elections to be held at the biennial state elections or if any vacancy is to be so filled, the district clerk shall notify the state secretary by April fifteenth of the year of the biennial state election of that fact and also of his name and mailing address.

Added by St.1988, c. 10, § 10.

§ 15. Acceptance of organization provisions by electorate

The selectmen or council of each of the several towns shall, upon receipt of the recommendation that a regional school district should be formed and of a proposed agreement therefor submitted in accordance with the provisions of sections fourteen to fourteen B, inclusive, or otherwise in the form and with the approval required by said sections, cause to be presented the question of accepting the provisions of sections sixteen to sixteen *I*, inclusive, and the proposed agreement or agreements. Said question shall be determined, in a town having an open town meeting, by vote with printed ballots at an annual or special town meeting to be held in either case within thirty days after receipt of such recommendation by the selectmen and, in a town having a representative town meeting or council, at an annual or special town election to be held in either case not less than thirty-five nor more than fifty days after receipt of such recommendation. The article in the warrant for such annual or special town meeting or election and the question on the printed ballots to be used at such meeting or election shall be in substantially the following form:

Shall the town accept the provisions of sections sixteen to sixteen *I*, inclusive, of chapter seventy-one of the General Laws providing for the establishment of a regional school district, together with the towns of , and , etc., and for construction, maintenance and operation of a regional school by said district in accordance with the provisions of a proposed agreement filed with the selectmen?

YES.	
NO.	

If a majority of the voters present and voting on said question in each of the several towns shall vote in the affirmative, said sections sixteen to sixteen *I*, inclusive, shall become effective, and the proposed regional school district shall be deemed to be established forthwith in accordance with the terms of the agreement so adopted notwithstanding any defect or omission in the creation or organization of any regional school district planning committee or regional school district planning board.

Added by St.1949, c. 638, § 1. Amended by St.1951, c. 331, § 4; St.1955, c. 141, § 1; St.1957, c. 53; St.1966, c. 136; St.1996, c. 454, § 27.

Historical and Statutory Notes

St.1918, c. 257, § 178.
St.1919, c. 5.
St.1920, c. 2.

§ 16. Status; powers and duties

A regional school district established under the provisions of the preceding section shall be a body politic and corporate with all the powers and duties conferred by law upon school committees, and with the following additional powers and duties:

(a) To adopt a name and a corporate seal, and the engraved or printed facsimile of such seal on a bond or note of the district shall have the same validity and effect as though such seal were impressed thereon.

(b) To sue and be sued, but only to the same extent and upon the same conditions that a town may sue or be sued.

(c) To acquire property within the towns comprising the district under the provisions of chapter seventy-nine and section fourteen of chapter forty for the purposes of the district and to construct, reconstruct, add to, remodel, make extraordinary repairs to, equip, organize and operate a school or schools for the benefit of the towns comprising the district, and to make any necessary contracts in relation thereto; provided, however, that no property shall be acquired unless the town in which such property is located approves such acquisition by a two-thirds vote at a town meeting which shall be called within sixty days after the district committee authorizes the incurring of debt for such purpose.

(d) To incur debt for the purpose of acquiring land and constructing, reconstructing, adding to and equipping a school building or for the purpose of remodeling and making extraordinary repairs to a school building and for the construction of sewerage systems and sewerage treatment and disposal facilities, or for the purchase or use of such systems with municipalities, and for the purpose of purchasing department equipment; or for the purpose of constructing, reconstructing or making improvements to outdoor playground, ath-

letic or recreational facilities; or for the purpose of constructing, reconstructing or resurfacing roadways and parking lots; or for the purpose of any other public work or improvement of a permanent nature required by the district; or for the purpose of any planning, architectural or engineering costs relating to any of the above purposes; provided, however, that written notice of the amount of the debt and of the general purposes for which it was authorized shall be given to the board of selectmen in each of the towns comprising the district not later than 7 days after the date on which the debt was authorized by the district committee; provided further, that no debt may be incurred until the expiration of 60 days after the date on which the debt was authorized; and provided further, that before the expiration of this period any member town of the regional school district may hold a town meeting for the purpose of expressing disapproval of the amount of debt authorized by the district committee, and if at that meeting a majority of the voters present and voting express disapproval of the amount authorized by the district committee, the debt shall not be incurred and the district school committee shall prepare another proposal which may be the same as any prior proposal and an authorization to incur debt therefor. Debt incurred under this section shall be payable within 30 years, but no such debt shall be issued for a period longer than the maximum useful life of the project being financed as determined in accordance with guidelines established by the division of local services of the department of revenue.

In the case of a vocational regional school district, if the district agreement so provides or is amended to so provide, such debt may also be incurred if two thirds of the member towns do not vote disapproval within said sixty day period provided that said towns which have not voted disapproval agree, within ninety days of the date on which said debt was authorized, to pay the total bond indebtedness authorized by the district committee without contribution by the member towns which voted disapproval of the amount of said debt. The member towns of such vocational regional school district which have voted disapproval of the new indebtedness shall have the right to retain their membership in the school district as provided in their district agreement except that they shall not be allowed any added enrollment that might result solely from the expansion of facilities that occurs on account of said new indebtedness.

(e) To issue bonds and notes in the name and upon the full faith and credit of said district; said bonds or notes shall be signed by the chairman and treasurer of the district committee, except that said chairman by a writing bearing his written signature and filed in the office of said treasurer, which writing shall be open to public inspection, may authorize said treasurer to cause to be engraved or printed on said bonds or notes a facsimile of said chairman's signature, and such facsimile so engraved or printed shall have the same validity and effect as said chairman's written signature, and each issue of bonds or notes shall be a separate loan.

(f) To receive and disburse funds for any district purpose.

(g) To incur temporary debt in anticipation of revenue to be received from any source. This clause shall also apply to all regional school districts established under the provisions of special laws.

(h) To assess member towns for any expenses of the district.

(i) To receive any grants or gifts for the purposes of the regional district school or schools.

(j) To engage legal counsel.

(k) To submit an annual report to each of the member towns, containing a detailed financial statement, and a statement showing the method by which the annual charges assessed against each town were computed, together with such additional information relating to the operation and maintenance of such school or schools as may be deemed necessary by the district school committee or by the selectmen of any member town.

(*l*) To employ a superintendent of schools who may also be a superintendent of one or more of the towns comprising said district and to establish an employment contract for a period of time to provide for the salary, fringe benefits, and other conditions of employment, including but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performance of duties of office, liability insurance, and leave for said superintendent, and said superintendent shall have all the powers and duties imposed upon school superintendents by law.

(m) To adopt an annual operating and maintenance budget for the next fiscal year not later than forty-five days prior to the earliest date on which the business session of the annual town meeting of any member town is to be held, but not later than March thirty-first, provided that said budget need not be adopted prior to February first; provided, further, that a superintendent may, with the approval of a majority of the member communities, submit said budget for approval following the notification of the annual local aid distribution, so-called.

(n) To incur debt for the purposes and terms specified in clause (d); provided that the vote of the district committee authorizing such debt is approved by a majority of the registered voters in the member towns voting on the question at an election called and held pursuant to the following provisions. The election shall be called by a warrant addressed to the registered voters in the member towns and signed by a majority of the members of the district committee which shall set forth the date of the election, the polling place or places in each town, the hours during which the polls are to be open and the question which is to appear upon the ballot. Notice of the election shall be given by posting a copy of the warrant attested by the secretary of the committee in at least one public place in each town and by publishing a copy thereof at least once in a newspaper of general circulation in the district, said posting and publishing to occur at least ten days before said election. A certificate of the secretary shall be conclusive evidence that the warrant was duly posted and published. The number and location of the polling place, or places, in each town shall be determined by the district committee after consultation with the selectmen thereof; and the hours during which all the polls in the district are open shall be uniform throughout the district and shall be not less than four nor more than eight consecutive hours. The district committee shall be responsible for preparing the ballots used at the election. The town clerk of each town shall certify the results of the election to the district committee. Except as provided herein the election shall be conducted in each town in the same manner as town meetings for the election of town officers. The expenses of the election shall be paid by the regional school district as an operating expense of the district; and if provision for their payment is not included in the budget for the year in which they are incurred, the district committee may use any available funds of the district or may transfer the sums required from appropriations included in the budget. The defeat of a proposal for incurring debt shall not prevent the resubmission of the same proposal as a new authorization.

(*o*) To refinance any debt incurred under paragraphs (d), (e), or (n), in accordance with the provisions of section 21A of chapter 44.

(p) To lease, or lease with an option to purchase, equipment for educational purposes. Such leases may be made for periods not exceeding five years.

(q) To lease land and buildings for educational purposes. Such leases may be made for periods not exceeding five years.

(r) To rent or lease with the approval of the commissioner of education surplus space in a school building of the district to house public or private profit-making businesses or nonprofit organizations; provided, however, that if said school building is in actual use such joint occupancy shall not interfere with education programs being conducted therein; and provided, further, that if said school building is not in actual use, such lease must be approved by the city or town in which the said building is located. Such leases may be made for periods not exceeding ten years. The monies received from such rental or lease shall be kept separate and apart from other funds in the district treasury by the district treasurer, and the principal and interest thereon may be expended without further appropriation by the regional school district committee for the upkeep of the facility in which such surplus space is located; provided, however, that any balance remaining in such account at the close of a fiscal year shall be paid into the excess and deficiency fund, so called, of the regional school district as unencumbered funds and expended as provided in section sixteen B½.

Added by St.1949, c. 638, § 1. Amended by St.1955, c. 65; St.1956, c. 243; St.1961, c. 380; St.1962, c. 232, §§ 3, 4; St.1965, c. 367; St.1966, c. 137; St.1968, c. 376, § 2; St.1969, c. 849, § 71; St.1971, c. 265; St.1971, c. 919; St.1972, c. 49; St.1972, c. 134; St.1973, c. 1025, § 1; St.1973, c. 1049; St.1974, c. 33; St.1975, c. 141, § 1; St.1978, c. 512, § 11; St.1978, c. 538, § 1; St.1985, c. 523, § 1; St.1985, c. 732; St.1987, c. 103; St.1990, c. 404, § 1; St.1991, c. 138, § 134; St.1996, c. 140; St.2003, c. 46, §§ 76 to 78, eff. July 31, 2003; St.2010, c. 188, § 57, eff. July 27, 2010.

Historical and Statutory Notes

St.1868, c. 278.
P.S.1882, c. 44, §§ 10, 11.
R.L.1902, c. 42, § 8.
St.1919, c. 292, § 2.

§ 16A. Regional district school committee; selection, powers and duties of officers; subcommittees

The powers, duties and liabilities of a regional school district shall be vested in and exercised by a regional district school committee organized in accordance with the agreement. The committee shall choose a chairman and vice chairman by ballot from its membership. The vice chairman shall, in the absence of the chairman, exercise the powers and perform the duties of said chairman. It shall appoint a secretary and a treasurer who may be the same person, but who need not be members of said committee. The treasurer shall receive and take charge of all money belonging to the district, and shall pay any bill of the district which shall have been approved by the committee. The committee may appoint an assistant treasurer who need not be a member of the committee, and who shall, in the absence of the treasurer, perform his duties and shall have the powers and be subject to the requirements and penalties applicable to him. The treasurer and assistant treasurer shall be persons of ability and experience and may, by vote of the committee, be compensated for their services. A treasurer of a member municipality of the district shall be eligible for appointment as treasurer or assistant treasurer. The treasurer and assistant treasurer of the district shall be subject to sections 35 and 109A of chapter 41, to the extent applicable. A business manager, assistant superintendent for business or employee with title of similar import with responsibilities similar to those of a town accountant shall be subject to section 52 of said chapter 41 and shall not hold the office of treasurer or assistant treasurer or hold any responsibilities for the receipt or disbursement of money. If the office of secretary is vacant or if the secretary is absent or is unable to perform his duties because of disability, the committee may appoint a temporary secretary to hold such office and exercise the powers and perform the duties thereof until a secretary is duly appointed or the secretary who was disabled or absent resumes his duties. The committee may appoint a school building committee which shall have such powers and duties relative to the construction, reconstruction, remodeling, repair, expansion or equipping of school buildings or facilities as the committee determines.

The committee may establish a subcommittee of no less than three members for the purpose of signing payroll warrants and accounts payable warrants to allow for the release of checks; provided, however, that such subcommittee shall make available to the committee at the next meeting, a record of such actions of such subcommittee.

The committee shall solicit proposals and contract with an independent certified public accountant to perform an annual financial audit and make management recommendations, and shall receive the audit report in public session. Copies of the audit shall be provided within 10 days to the director of accounts and to the board of selectmen, town manager, mayor or city manager, as the case may be, in each member municipality.

Added by St.1949, c. 638, § 1. Amended by St.1958, c. 129; St.1963, c. 132; St.1964, c. 17; St.1968, c. 272; St.1973, c. 1104, § 1; St.1983, c. 149; St.2002, c. 6, §§ 1, 2.

§ 16B. Budgets; apportionment of expenses

The regional district school committee, by a two-thirds vote of all its members, shall annually determine the amounts necessary to be raised, after deducting the amount of aid such district is to receive pursuant to section sixteen D, to maintain and operate the district school or schools during the next fiscal year, and amounts required for payment of debt and interest incurred by the district which will be due in the said year, and shall apportion the amount so determined among the several municipalities in accordance with the terms of the regional school district agreement. The amounts so apportioned for each municipality shall be certified by the regional school district treasurer to the treasurers of the several municipalities within thirty days from the date on which the annual budget is adopted by a two-thirds vote of the regional district school committee, but not later than April thirtieth. The regional school district treasurer shall include in the certification to each municipality a statement setting forth the amount which the district is to receive under said section sixteen D for the ensuing fiscal year and the proportionate share of such aid for such municipality, the amount, if any, by which the unencumbered amount in the excess and deficiency fund, so called, of the regional school district at the end of the preceding fiscal year, as certified by the commissioner of revenue pursuant to section sixteen B ½, exceeded five per cent of the regional school district's operating budget and its budgeted capital costs for the current fiscal year, and the proportionate share of any such excess in said fund by which such municipality's assessment for the current fiscal year was reduced.

The regional school district treasurer shall provide a copy of the adopted budget to the chairmen of the boards of selectmen, chairmen of the finance committees, mayors, presidents of the city councils and the treasurers of the several municipalities.

Notwithstanding any provision of law to the contrary, the superintendent of schools of a regional school district may, on matters relating to the regional school budget, address the membership at a city council meeting, a town meeting or a meeting of the town council in a municipality having a town council form of government in cities and towns within the regional school district when the regional school budget is being considered.

The members of a regional school district, including a vocational regional school district, may elect to reallocate the sum of their required local contributions to the district in accordance with the regional agreement; provided, however, that the total sum of their required contributions shall not be decreased. Election shall be by approval of all members of the district. Approval of each member shall be given by majority vote at an annual or special town meeting, in the case of towns, or by majority vote of the council, in the case of cities. The commissioner of education shall be notified upon the adoption of this section by this district. Nothing in this section shall be construed to affect the calculation of the members' required local contributions for any succeeding year as provided by chapter seventy of the General Laws.

The annual regional school district budget as adopted by a two-thirds vote of the regional school district committee shall require the approval of two-thirds of the local appropriating authorities of the member municipalities. The regional school district budget so approved shall be apportioned between or among the member municipalities and paid in accordance with the terms of the agreement.

In the event that the regional school district budget in a regional school district is not approved by at least two-thirds of the member municipalities as required by this section, the regional school district committee shall have thirty days to reconsider, amend and resubmit a budget on the basis of the issues raised. The amounts required to be raised on account of the regional school district budget shall be reapportioned between or among the member municipalities by the regional school district committee and a copy of the amended budget shall be provided, not later than seven days from the date the amended regional school district budget was adopted by the regional school district committee, to the chairmen of the boards of selectmen, chairmen of the finance committees, mayors, presidents of the city councils and treasurers of the member municipalities. With the approval of the commissioner of education, a regional school district committee may have an additional fifteen days within which to reconsider, amend and reapportion said budget. The respective amounts reapportioned between or among the member municipalities by the regional school district committee shall be recertified by the district treasurer to the treasurers of the member municipalities not later than seven days from the date the amended regional school district budget was adopted by the regional school district committee. Prior to the expiration of forty-five days from the date on which such budget was adopted by the regional school district committee, each member municipality shall hold a meeting of the local appropriating authority to act upon the appropriation of the budget so reapportioned and recertified to it. If the appropriating authorities of at least two-thirds of the member municipalities vote to appropriate the amounts so reapportioned and recertified to them, such budget shall be considered approved and shall be apportioned between or among the member municipalities and paid by them in accordance with the terms of the regional school district agreement. In the case of a regional school district having three or more members, if the appropriating authorities of more than one-third of the member municipalities vote not to appropriate the amounts so reapportioned and recertified to them, then the budget shall again be recommitted to the regional school district committee for action pursuant to this paragraph. In the case of a two-member regional school district, if the appropriating authority of either member municipality votes not to appropriate the amount so reapportioned and recertified to it, the provisions of the following paragraph shall apply.

The regional school district committee shall convene a special district-wide meeting open to all registered voters in both municipalities at which the amended regional school district budget, proposed by the regional school district committee, shall be considered. Such meeting shall be called pursuant to a warrant, under the hands of at least a majority of the regional school district committee, notice of which shall be given at least fourteen days prior to the date of such meeting. The warrant

shall state the time, place and purpose of the meeting and shall be directed to the district secretary, who shall give notice by posting a copy in the city or town clerk's office and at least two other public places in each member municipality and who shall further provide notice by publishing a copy of said warrant in at least one newspaper in general circulation within the member municipalities. The boards of selectmen of the member municipalities in a joint meeting shall, by a majority vote of those present, appoint a town moderator or any other person acceptable to the boards of selectmen to act as moderator and the district secretary shall keep the record of such meeting. Approval of the regional school district budget shall require the affirmative vote of at least a majority of those present and voting thereon, by a counted vote. The regional school district budget so approved shall be apportioned between the member municipalities and paid by them in accordance with the terms of the regional school district agreement. If, after submission of the budget, no agreement is reached as to a budget for the regional school district, the district shall notify the Department of Education of a lack of a budget and the commissioner, or his designee, shall certify an amount sufficient for the operation of the district and order the appropriation thereof in an amount not less than ½ of the total budget approved by the region in the most recent fiscal year. Similar sums shall be certified and appropriated for each successive month to insure the continued provision of services by the district until such time as a budget is adopted and approved by the regional committee and member towns in the manner otherwise provided herein. In the event a budget is not adopted by December first in any year, the department shall assume operation of the district and funds for same shall be deducted from local aid distributed to member towns.

A member municipality of a regional school district having three or more members need not hold a meeting of its local appropriating authority to act upon the appropriation of amounts reapportioned and recertified to it if it has previously voted to appropriate for the regional school district an amount equal to or greater than the amount so recertified to it, notwithstanding the provisions of the fifth paragraph of this section. A municipality that does not hold such a meeting prior to expiration of forty-five days from the date on which an amended budget was adopted by the regional school district committee shall be deemed to have voted to appropriate the amounts reapportioned and recertified to it.

At any time after the adoption of the annual budget, the regional district school committee may reduce the amount to be raised by assessment to the several municipalities and reapportion the reduced amount in accordance with the terms of the regional school district agreement for apportionment of costs. The regional school district treasurer shall recertify the amounts reapportioned to the treasurers of the several municipalities within thirty days from the date on which the regional district school committee votes to reduce the annual budget or assessments. If the recertification is made after the annual town meeting of a member town, the amount recertified shall be considered an amendment to the amount required to have been appropriated at that meeting without the necessity for further action by the town, and, if the annual assessment of taxes has not been made, the municipal assessors shall include only the amount so recertified in making the annual assessment of taxes under the provisions of section twenty-three of chapter fifty-nine.

For the purposes of this section, a vote or votes by a local appropriating authority to appropriate the municipality's apportioned share of the regional school district budget shall constitute approval of the annual regional school district budget; provided, however, that any municipality's apportioned share may not be increased in the same fiscal year without approval of the local appropriating authority.

The clerk of each member municipality shall, within seven days following a vote concerning a regional school district budget or apportionment, certify in writing to the treasurer of the regional school district the results of such vote by the municipality.

This section shall apply to all regional school districts established under the provisions of a special law, notwithstanding any contrary provisions in any such special law.

Added by St.1949, c. 638, § 1. Amended by St.1958, c. 619; St.1969, c. 849, § 72; St.1973, c. 1025, § 2; St.1974, c. 492, § 12; St.1977, c. 823; St.1979, c. 132; St.1980, c. 580, § 6; St.1981, c. 744; St.1982, c. 148; St.1984, c. 51; St.1987, c. 580, § 1; St.1990, c. 356; St.1991, c. 6, § 22; St.1991, c. 138, § 374; St.1996, c. 151, § 220.

§ 16B½. Excess and deficiency fund; surplus funds used to reduce assessments

If the unencumbered amount in the excess and deficiency fund, so called, of a regional school district at the end of a fiscal year exceeds five per cent of its operating budget and its budgeted capital costs for the succeeding fiscal year, the amount in excess of the said five per cent shall be applied by the regional school district committee to reduce the amount to be raised by assessment on the member cities and towns in accordance with the terms of the agreement for apportionment of costs. The commissioner of revenue shall certify the unencumbered amount in the excess and deficiency fund, so called, of a regional school district, and the amount, if any, by which it exceeds five per cent of the district's operating budget and its budgeted capital costs for the succeeding fiscal year, at the end of each fiscal year and shall report such amount to the regional district school committee, the board of selectmen in each member town and the city council in each member city by December first of each year. The regional district school committee shall submit all information necessary to perform said certification to the commissioner of revenue at the close of each fiscal year but no later than October thirty-first. The regional school district treasurer shall recertify the amounts reapportioned to the treasurers of the several towns within thirty days from the date on which the district school committee votes to reduce the amounts to be raised by assessment. If the recertification is made after the annual town meeting referred to in the first paragraph of section sixteen B, the amount recertified shall be considered an amendment to the amount required to have been appropriated at that meeting without the necessity for further action by the town, and, if the annual assessment of taxes has not been made, the town assessors shall include only the amount so recertified in making the annual assessment of taxes under the provisions of section twenty-three of chapter fifty-nine.

This section shall be subject to the provisions of section thirty-four of chapter seventy-one and shall place no additional limitations on the budgetary authority of the school committee.

Added by St.1979, c. 738, § 1. Amended by St.1987, c. 580, § 2; St.1988, c. 199, §§ 14, 15, 48.

§ 16C. School transportation

The regional school district shall be subject to all laws pertaining to school transportation; and when the agreement provides for the furnishing of transportation by the regional school district, the regional school district shall be obliged to provide transportation for all school children in grades kindergarten through twelve and the commonwealth shall reimburse such district to the full extent of the amounts expended for such transportation; provided, however, that no reimbursement for transportation between school and home shall be made on account of any pupil who resides less than one and one-half miles from the school of attendance, measured by a commonly traveled route. The commonwealth shall further reimburse such district to the full extent of the amounts expended for the transportation of pupils between school and a child care center licensed or approved by the department of early education and care or a child care facility which is part of a public school system or a private, organized educational system, in accordance with standards approved by the school committee; provided, however, that no reimbursement shall be made if the distance between the school and said facility is less than one and one-half miles, measured by a commonly traveled route, nor shall reimbursement be provided for transportation to a day care facility located outside the boundaries of the regional school district. The state treasurer shall annually, on or before November twentieth, pay to the regional school districts, subject to appropriation, the sums required for such reimbursement and approved by the commissioner of education.

Added by St.1949, c. 638, § 1. Amended by St.1952, c. 470; St.1966, c. 14, § 49; St.1987, c. 767, § 2; St.1991, c. 138, § 132; St.2008, c. 215, § 55, eff. July 31, 2008.

§ 16D. Aid from state

(a) A regional school district shall be entitled to receive state aid for construction of regional schools. Each city or town in a regional school district whether established under special or general law shall continue to receive such state aid for educational purposes as it would be entitled to receive if such district had not been formed. In addition, the state treasurer shall, subject to the provisions of subsection (c), upon certification by the commissioner of education annually pay on or before November twentieth to each regional school district an amount computed as follows:

(i) seventy per cent multiplied by the product of the regional school aid percentage multiplied by the regional reimbursable expenditures of the regional school district, for such districts which include grades kindergarten through twelve; or

(ii) fifty per cent multiplied by the product of the regional school aid percentage multiplied by the regional reimbursable expenditures of the regional school district, for all other regional school districts.

(b) The definitions in section two of chapter seventy shall apply to this section and the following words and phrases as used in this section shall have the following meanings:—

"Regional reimbursable expenditures", the total amount expended by a regional school district during a fiscal year for the support of public schools during said year exclusive of expenditures for transportation, for food for school food service programs and for capital outlays, after deducting therefrom any receipts for tuition, receipts from the federal government, the proceeds of any invested funds, and grants, gifts and receipts from any other source, to the extent that such receipts are applicable to such expenditures; provided, however, that in the first year that a regional school district is formed or the year in which a regional school district expands "regional reimbursable expenditures" shall mean the total amount expended by a regional school district in the fiscal year during which time the regional school district becomes operative or during which time the regional school district expands for the support of the public schools during said year exclusive of expenditures for transportation, for food for school food service programs, and for capital outlays, after deducting therefrom any receipts for tuition, receipts from the federal government, the proceeds of any invested funds and grants, gifts and receipts from any other source, to the extent that such receipts are applicable to such expenditures; provided however that amounts received by a regional school district under this section as school aid shall not be so deducted. The commissioner of education may, by regulation, further define the expenditures and receipts that may be included hereunder.

"Regional school aid percentage," the amount by which one hundred per cent exceeds the product, to the nearest tenth of one per cent, of sixty-five per cent multiplied by the regional valuation percentage; provided, however, that in no instance shall the regional school aid percentage be less than fifteen per cent.

"Regional valuation percentage," the proportion, to the nearest tenth of one per cent, which the total equalized valuation of all cities and towns in the regional school district divided by the total school attending children in all cities and towns in the district bears to the average equalized valuation per school attending child in the cities and towns in regional school districts in the entire state.

(c) The receipt of the regional school aid as set forth in clauses (i) and (ii) of subsection (a) shall be subject to the following conditions:

(i) the formation of new regional school districts and the expansion of currently existing regional school districts shall be subject to the approval of the commissioner of education;

(ii) except as provided in clause (iii) of this subsection, no regional school aid shall be paid prior to the date of award of a contract for the construction of a regional school by the regional district school committee or prior to the date the regional district school committee enters into a lease of land and buildings or portions of buildings in lieu of such construction; and

(iii) in the case of regional school districts formed for administrative purposes only, no regional school aid shall be paid prior to the date on which the regional school district has assumed jurisdiction over the pupils in the district and the commissioner of education has made a determination that member cities and towns have provided sufficient and adequate school facilities for each grade level included in the regional school district.

(d) In the event that the member communities of a proposed regional school district should vote on or before July first of any year to establish a regional school district on or before September fifteenth of that same calendar year, then such regional school district shall be entitled to receive, subject to appropriation, on or before November twentieth of that same calendar year, twenty-five per cent of an amount of regional school aid computed in accordance with the provisions of this section. For purposes of this paragraph, regional reimbursable expenditures shall mean the total amount expended by the member communities for the support of public school students who will be served by the newly established regional school district, during the fiscal year in which the member communities voted to establish the regional school district, minus the exclusions currently provided for in this section.

In the event that all of the member communities of a partial regional school district should vote on or before July first of any year to amend their regional school district agreement to allow for ex-

pansion into a full kindergarten through twelve regional school district on or before September fifteenth of that same calendar year, then such expanded regional school district shall be entitled to receive, subject to appropriation, on or before November twentieth of that same calendar year, twenty-five per cent of an amount of regional school aid calculated upon the basis of an existing kindergarten through twelve regional school district. The regional school aid shall be computed in accordance with the provisions of this section. For purposes of this paragraph, regional reimbursable expenditures shall mean the total amount expended by the partial regional school district and the member communities for the support of their public schools during the fiscal year in which expansion is voted, minus the exclusions currently provided for in this section.

(e) Notwithstanding the foregoing provisions of this section, for the fiscal year ending on June thirtieth, nineteen hundred and ninety-four, regional schools shall receive the same amount of state aid that they received in the fiscal year ending on June thirtieth, nineteen hundred and ninety-three; provided, however, that any regional school that received in the fiscal year ending on June thirtieth, nineteen hundred and ninety-three less than seventy-six percent of the amount of state aid that it would have been entitled to pursuant to the foregoing provisions of this section if the full amount had been appropriated for such state aid in said fiscal year nineteen hundred and ninety-three shall receive an additional state aid payment in fiscal year nineteen hundred and ninety-four such that the total state aid for each regional school pursuant to this section shall be no less than seventy-six percent of the amount of state aid that it would have been entitled to pursuant to the foregoing provisions of this section if the full amount had been appropriated for such state aid in said fiscal year nineteen hundred and ninety-three; provided, further, that any regional school district that is newly reorganized pursuant to section fifteen subsequent to June thirtieth, nineteen hundred and ninety-two but prior to January first, nineteen hundred and ninety-four shall receive seventy-six percent of the amount it would otherwise have been entitled to receive for expenses incurred in the first year of operation as a reorganized school district pursuant to the foregoing provisions of this section; provided, further, that any regional school district whose member communities hold meetings on regionalization prior to January first, nineteen hundred and ninety-four and becomes newly organized prior to April first, nineteen hundred and ninety-four shall receive seventy-six percent of the amount it would otherwise have been entitled to receive for expenses incurred in the first year of operation as an organized school district pursuant to the foregoing provisions of this section.

(f) For fiscal years nineteen hundred and ninety-four and subsequent fiscal years, the amount of state aid distributed as base aid pursuant to chapter seventy shall be deemed to be in full satisfaction of the provisions of subsection (e).

(g) Notwithstanding the foregoing provisions, regional bonus aid, but no other aid pursuant to this section, shall be paid to any regional school district formed after fiscal year nineteen hundred and ninety-three for the immediate five fiscal years following the establishment of said regional school district. Regional bonus aid shall be payable in an amount equal to fifty dollars per foundation enrollment, in the first fiscal year following the establishment of said regional school district; forty dollars per foundation enrollment in the second fiscal year following the establishment of said regional school district; thirty dollars per foundation enrollment in the third fiscal year following the establishment of said regional school district; twenty dollars per foundation enrollment in the fourth fiscal year following the establishment of said regional school district; and, ten dollars per foundation enrollment in the fifth fiscal year following the establishment of said regional school district.

Added by St.1949, c. 638, § 1. Amended by St.1967, c. 779; St.1974, c. 492, § 13; St.1975, c. 436, § 9; St.1987, c. 730; St.1993, c. 71, § 34; St.1993, c. 110, § 263; St.1993, c. 495, § 24.

§ 16D½. Monies received as nonresident tuition or reimbursements from commonwealth for foster care children

All monies received by a regional district school committee as tuition payments for nonresident students and as reimbursements from the commonwealth for students who are foster care children shall be deposited with the district treasurer and held in a separate account in the district treasury. The receipts held in such a separate account may be expended by said regional district school committee without further appropriation for expenses incurred in providing education for such nonresi-

dent students or for such students who are foster care children.
Added by St.1983, c. 340. Amended by St.1998, c. 463, § 61.

§ 16E. Audits; payment of costs

The director of accounts in the department of corporations and taxation shall annually cause an audit to be made of the accounts of the regional district school committee, and for this purpose he, and his duly accredited agents, shall have access to all necessary papers, books and records. Upon the completion of each audit, a report thereon shall be made to the chairman of the district committee, and a copy thereof shall be sent to the chairman of the selectmen and of the school committee of each town which is a member of the district. The director shall apportion the cost among the several towns which are members of the district on the basis provided by section fourteen B, and submit the amounts of each apportionment to the state treasurer, who shall issue his warrant requiring the assessors of the towns which are members of the district to assess a tax to the amount of the expense, and such amounts shall be collected and paid to the state treasurer as provided by section twenty of chapter fifty-nine.
Added by St.1949, c. 638, § 1.

§ 16F. Retirement system

The regional school district shall maintain a contributory retirement system for non-teaching employees of the district, subject in all respects to the applicable provisions of chapter thirty-two.
Added by St.1949, c. 638, § 1.

§ 16G. Liability of towns for expenses of district

No town in a regional school district shall be liable for any obligation imposed on any other town in said district by authority of sections fourteen to sixteen *I*, inclusive, or of any agreement thereunder, any other provision of law to the contrary notwithstanding.
Added by St.1949, c. 638, § 1.

§ 16G½. Stabilization fund

A regional school district may, upon a majority vote of all the members of the regional district school committee and, with the approval of a majority of the local appropriating authorities of the member municipalities, establish a stabilization fund and may, in any year, include in its annual budget for deposit in the stabilization fund an amount not exceeding five per cent of the aggregate amount apportioned to the member municipalities for the preceding fiscal year or such larger amount as may be approved by the director of accounts. The aggregate amount in the fund at any time shall not exceed five per cent of the combined equalized valuations of the member municipalities. Any interest shall be added to and become a part of the fund. The annual report submitted to the member municipalities pursuant to clause (k) of section sixteen shall include a statement of the balance in the stabilization fund and all additions to and withdrawals from the fund during the period covered by such report.

The treasurer of the regional school district shall be the custodian of such fund and may deposit or invest the fund in such deposits or investments as are legal for the deposit or investment of revenue funds of the district or in such securities as are legal for the investment of funds of savings banks under the laws of the commonwealth.

The stabilization fund may be appropriated by vote of two-thirds of all of the members of the regional district school committee for any purpose for which regional school districts may borrow money or for such other district purpose as the director of accounts may approve.

This section shall also apply to any regional school district established under the provisions of a special law.
Added by St.1988, c. 225. Amended by St.2003, c. 46, § 79, eff. July 31, 2003: St.2010, c. 188, § 58, eff. July 27, 2010.

§ 16H. Repealed, 2003, 46, Sec. 80

§ 16*I*. Severability of sections relating to regional school districts

If any provision of said sections, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of said sections and the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.
Added by St.1949, c. 638, § 1.

§ 17. Repealed, 1991, 138, Sec. 336

§ 17A. Culinary arts program; special fund

In any city or town which accepts the provisions of this section and in any regional school district

upon its acceptance by the school committee of said district and a majority of the cities and towns in said district by vote of the city council or board of selectmen of said cities and towns, any income received in a fiscal year not exceeding, in the aggregate, fifteen thousand dollars derived from the sale of products produced in a culinary arts program conducted in any public high school shall be deposited in a special fund by the school committee in any banking institution in the commonwealth. Expenditures may be made from said special fund by the school committee for the culinary arts program without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four; provided, however, that said special fund shall not be used to pay the salary of any employee, and in any fiscal year no more than five thousand dollars from said fund shall be used for the purchase of equipment. The treasurer of a city or town shall annually audit the account of said special fund and shall submit copies thereof to the mayor, city council, city or town manager, board of selectmen and school committee of such city or town, and to the director of the bureau of accounts. In regional school districts, the school committee shall select the city or town treasurer from among member cities and towns to complete said audit and make such report.

Added by St.1981, c. 236.

§ 18. Evening schools

Any town may, and every town in which there are issued during any year certificates authorizing the employment of twenty or more persons who do not possess the educational qualifications enumerated in section one of chapter seventy-six, shall maintain for not less than forty evenings during the following school year an evening school or schools for the instruction of persons over fourteen years of age in orthography, reading, writing, the English language and grammar, geography, arithmetic, industrial drawing, both free hand and mechanical, the history of the United States, physiology and hygiene and good behavior. Such other subjects may be taught as the school committee considers expedient.

Historical and Statutory Notes

St.1870, c. 248, § 2.
P.S.1882, c. 44, § 7.
St.1883, c. 174, § 1.
St.1898, c. 496, § 5.
R.L.1902, c. 42, § 11.
St.1914, c. 590.
St.1918, c. 257, § 179.
St.1919, c. 5.
St.1920, c. 2.

§ 19. Evening classes in high schools

Every city of fifty thousand inhabitants shall maintain annually an evening high school, in which shall be taught such subjects as the school committee considers expedient, if fifty or more residents, sixteen years or over, competent in the opinion of the committee to pursue high school studies, shall petition in writing for an evening high school and certify that they desire to attend.

Amended by St.1939, c. 461, § 1.

Historical and Statutory Notes

St.1886, c. 236, § 1.
St.1898, c. 496, § 6.
R.L.1902, c. 42, § 12.

§ 20. Notice of evening schools; publication; fees for instruction

The school committee shall, two weeks next before the opening of each term of the evening schools, post in three or more public places in the town notice of the situation of said schools, the date of the beginning of the term, the evenings of the week on which they will be in session, such regulations as to attendance as it deems proper, and the provisions of section ninety-five of chapter one hundred and forty-nine. Except in the city of Boston, the school committee may require from each student, not bound by law to attend, an advance payment not exceeding twenty-five dollars for each course offered for which the student registers and for which the town receives no reimbursement from the commonwealth or any of its agents, and not exceeding twenty dollars for each course offered for which the student registers and for which the town is reimbursed in whole or in part by the commonwealth or any of its agents, which fee may, at its discretion, be paid into the town treasury to be credited to the school appropriation, or be returned in whole or in part at such time and under such conditions as the committee determines. In the city of Boston, the school committee may require from each student, not bound by law to attend, an advance payment not exceeding five dollars, which may, at its discretion, be paid into the city treasury to be credited to the school appropriation, or be returned in whole or in part at such time and under such conditions as the committee determines.

Amended by St.1951, c. 680; St.1962, c. 28; St.1977, c. 137.

Historical and Statutory Notes

St.1887, c. 433, § 4.
R.L.1902, c. 42, § 13.
St.1911, c. 309.

§ 20A. Instructional Materials Trust Fund

Any city, town or regional school district, located within such city or town, which accepts the provisions of this section may establish a fund to be known as the Instructional Materials Trust Fund, hereinafter in this section called the fund, and may appropriate money for said fund, which will be kept separate from all other monies by the city or town treasurer or, in the case of a regional school district, the treasurer of such regional school district. Said fund shall be managed by a board of trustees, hereinafter referred to as the board. The superintendent of schools of the city or town, or in the case of a regional school district, the superintendent of the regional school shall be chairperson of said board. In addition to the chairperson, the board shall consist of: two school committee members appointed by the school committee; two teachers from the elementary grade levels kindergarten through grade six, inclusive, and two teachers from the secondary grade levels, grades seven through twelve, inclusive, appointed by the local teachers organizations; one elementary school administrator and one secondary school administrator appointed by the superintendent of schools; and two parents of students in the elementary schools and two parents from the secondary schools appointed by the mayor of a city or the selectmen of a town, as the case may be, and in the case of a regional school district, appointed by the chairman of the regional school district committee. The terms of office of the board members shall be three years, except for the chairperson, who shall serve ex-officio. A vacancy on said board occurring by reason of the expiration of a term or other cause shall be filled by the designated appointing powers. A member of said board may be reappointed.

Said fund may accept a gift or donation. The principal of said fund shall not be expended. Said board is hereby authorized to expend annually ninety percent of the interest earned from the principal of said fund for the purchase of instructional materials; provided, however, that one-half of such expenditure shall be for the benefit of grade levels from kindergarten through grade six, inclusive, the remaining half for the benefit of grade levels seven through twelve, inclusive.

This section shall take effect upon its acceptance by a city, town, or regional school district.
Added by St.1991, c. 275.

§ 21. Continuation schools; establishment; conditions

Every town which has accepted chapter three hundred and eleven of the General Acts of nineteen hundred and nineteen, and in which, in any year, two hundred or more minors under sixteen are employed not less than six hours per day by authority of employment permits described in section one of chapter one hundred and forty-nine or home permits described in section one of chapter seventy-six, exclusive of minors employed only during vacations, shall, except as otherwise provided in this section, and any other town which has accepted said chapter three hundred and eleven, may, through its school committee, local board of trustees for vocational education, or both, establish at the beginning of the next school year and maintain continuation schools or courses of instruction for the education of such minors, and for such others as may be required to attend under section twenty-five. The said schools or courses shall be in session the same number of weeks in each year as the local high schools, and the sessions shall be between the hours of eight in the morning and five in the afternoon of any working days except Saturday. If in a town required to establish continuation schools or courses under this section, after examination of the records required to be kept under sections eighty-six and eighty-nine of chapter one hundred and forty-nine, it appears that in each of two consecutive years the number of employed minors described above falls below two hundred, the school committee of said town may apply to the department for exemption from the provisions of this section, and, if specifically exempted by the department under conditions defined by it, said town shall be deemed to have come under the permissive provisions of this section and shall so remain until two hundred or more such minors in any year are employed therein.
Amended by St.1945, c. 133, § 1.

Historical and Statutory Notes

St.1913, c. 805, § 1.
St.1919, c. 311, § 1, cls. 1, 3, § 7.
St.1922, c. 401.

§ 22. Attendance

Every minor described in the preceding section shall, subject to the laws relating to the public

schools, attend said schools or courses in the town of his employment for not less than four hours per week; but the attendance of minors who have been required to attend continuation schools, and are temporarily out of employment or business, shall be for not less than twenty hours per week, if said schools or courses are so long in session. Instruction in the regular schools may and upon application of the parent or guardian shall be accepted as equivalent to that required by this section and section twenty-five.

Historical and Statutory Notes

St.1913, c. 805, § 11.
St.1919, c. 311, § 1, cls. 2, 3.

§ 23. Use of existing educational facilities

In the establishment and conduct of said schools or courses, a town may take advantage of established educational agencies, and may utilize any suitable quarters approved by the department; but, when established, the said schools or courses shall be a part of the public school system of the town.

Historical and Statutory Notes

St.1919, c. 311, § 1, cl. 4.

§ 24. Cost of maintenance; source of funds

The town of residence of a person who is required by section twenty-two to attend a continuation school of another town shall pay to such other town a tuition fee to be fixed by the commissioner of education, and not to exceed the average annual maintenance cost per pupil of continuation schools throughout the commonwealth, as last ascertained. In default of payment, such fee may be recovered in an action of contract.

Amended by St.1966, c. 14, §§ 50, 51; St.1978, c. 367, § 70D; St.1998, c. 463, § 62.

Historical and Statutory Notes

St.1913, c. 805, §§ 2, 3.
St.1919, c. 311, § 2.
St.1922, c. 413.

§ 25. Unemployed minors; attendance requirements

Any minor under sixteen who has been regularly employed in a town other than that of his residence, and who is temporarily unemployed, may be required, under conditions approved by the department, to attend a continuation school or course in the town of his residence.

Historical and Statutory Notes

St.1913, c. 805, § 4.
St.1919, c. 311, § 3, cl. 1.

§ 26. Penalty for failure to establish or maintain school

A town required by section twenty-one to establish and to maintain continuation schools or courses which refuses or neglects to appropriate money necessary therefor, shall forfeit from funds due it from the commonwealth a sum equal to twice that estimated by the department as necessary properly to provide for the same. A sum equal to three fifths of such forfeiture shall be paid by the state treasurer to the school committee of the delinquent town, and the committee shall expend the same for such establishment and maintenance to the same extent as if it had been regularly appropriated by the town therefor.

Historical and Statutory Notes

St.1919, c. 311, § 6.

§ 26A. Extended school services for children whose parents are employed; establishment; conditions

If the school committee of a town determines that sufficient need exists therein for extended school services for children, between three and fourteen years of age, of parents who are employed, and whose employment is determined by said committee to be necessary for the welfare of their families, said school committee, subject to section twenty-six B, and with the approval of the city council or selectmen may establish and maintain such services.

Added by St.1946, c. 165, § 1. Amended by St.1979, c. 717, § 2.

§ 26B. Organization and operation of plan

If said school committee, upon determination by it of sufficient need, votes that said services should be established by it in such town upon approval of the city council or selectmen, it shall submit in writing a plan of said services to the commissioner of education for his written approval; provided, that said extended school services proposed in said plan shall consist of such care as shall be determined by standards established by said commissioner in consultation with the state department of public health and shall be operated by said school committee under the general supervision of said commissioner; and provided further, that said school committee shall establish as one of the rules

of admission of any such child to the benefits of said extended school services that the parents of such child shall pay toward the cost of said services such sum as said school committee shall determine. For the purposes of clause (2) of section five of chapter forty, the establishment and maintenance of said extended school services shall be deemed to be included within the term "support of public schools".

Added by St.1946, c. 165, § 1. Amended by St.1977, c. 480.

§ 26C. Contributions and federal funds; use

The commonwealth and the school committee of any town may accept funds from the federal government for the purposes of sections twenty-six A to twenty-six F, inclusive. The school committee of any town may receive contributions in the form of money, material, quarters or services for the purposes of said sections from organizations, employers and other individuals. Such contributions received in the form of money, together with fees from parents and any allotments received from the federal government for said purposes, shall be deposited with the treasurer of such town and held as a separate account and expended by said school committee without appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four.

Added by St.1946, c. 165, § 1.

§ 26D. Borrowing in anticipation of federal funds

If a town shall have a written contract with the federal government whereby said government grants or offers such town a sum of money to be used with funds which may be provided in said town for the purposes of sections twenty-six A to twenty-six F, inclusive, and said town shall be required primarily to pay that portion of the expenses for which reimbursement is to be received from the grant, the treasurer of such town, with the approval of the mayor, or of the city manager, if any, or of the selectmen, as the case may be, in anticipation of the receipt of the proceeds of such grant, may incur debt, outside the debt limit, to an amount not exceeding the amount of the grant as shown by the agreement, and may issue notes therefor, payable in not exceeding one year from their dates. Any loan so issued for a shorter period than one year may be refunded by the issue of other notes maturing within the required period; provided, that the period from the date of issue of the original loan to the date of maturity of the refunding loan shall not be more than one year. The proceeds of the grant, so far as necessary, shall be applied to the discharge of the loan.

Added by St.1946, c. 165, § 1.

§ 26E. Repealed, 1978, 367, Sec. 70E

§ 26F. Repealed, 1966, 14, Sec. 52

§ 27. Lectures

The school committee may employ competent persons to deliver lectures on the natural sciences, history, and kindred subjects, and may provide cards or pamphlets giving the titles and authors of books of reference on the subject matter of said lectures contained in the local public libraries.

Historical and Statutory Notes

St.1893, c. 208.
St.1900, c. 166.
R.L.1902, c. 42, § 14.

§ 28. Summer schools

The school committee may establish and maintain schools to be kept open for the whole or any part of the summer vacation; but attendance thereon shall not be compulsory or be considered as a part of the school attendance required by law.

Historical and Statutory Notes

St.1899, c. 246.
R.L.1902, c. 42, § 15.

§ 29. Repealed, 1979, 717, Sec. 3

§ 30. Moral education

The president, professors and tutors of the university at Cambridge and of the several colleges, all preceptors and teachers of academies and all other instructors of youth shall exert their best endeavors to impress on the minds of children and youth committed to their care and instruction the principles of piety and justice and a sacred regard for truth, love of their country, humanity and universal benevolence, sobriety, industry and frugality, chastity, moderation and temperance, and those other virtues which are the ornament of human society and the basis upon which a republican constitution is founded; and they shall endeavor to lead their pupils, as their ages and capacities will admit, into a clear understanding of the tendency of the above mentioned virtues to preserve and perfect a republican constitution and secure the blessings of liber-

ty as well as to promote their future happiness, and also to point out to them the evil tendency of the opposite vices.

Historical and Statutory Notes

C.L. c. 136, § 3.
St.1789, c. 19, § 4.
St.1826, c. 143, § 3.
R.S.1836, c. 23, § 7.
G.S.1860, c. 38, § 10.
P.S.1882, c. 44, § 15.
R.L.1902, c. 42, § 18.

§ 30A. Repealed, 1986, 195

§ 31. Bible reading

A portion of the Bible shall be read daily in the public schools, without written note or oral comment; but a pupil whose parent or guardian informs the teacher in writing that he has conscientious scruples against it, shall not be required to read from any particular version, or to take any personal part in the reading. The school committee shall not purchase or use in the public schools school books favoring the tenets of any particular religious sect.

Historical and Statutory Notes

St.1826, c. 143, § 7.
R.S.1836, c. 23, § 23.
St.1855, c. 410.
G.S.1860, c. 38, § 27.
St.1862, c. 57.
St.1880, c. 176.
P.S.1882, c. 44, § 32.
R.L.1902, c. 42, § 19.

§ 31A. Guidelines for celebration of holidays authorized

The school committee may set appropriate guidelines for the celebration of Christmas and other festivals observed as holidays for the purpose of furthering the educational, cultural and social experiences and development of children.

Added by St.1973, c. 209.

§ 32. Observance of Memorial Day

In all the public schools the last regular session, or a portion thereof, prior to the last Monday in May, known as Memorial Day, shall be devoted to patriotic exercises.

Amended by St.1970, c. 547, § 4.

Historical and Statutory Notes

St.1890, c. 111.
R.L.1902, c. 42, § 20.

§ 32A. Sex education; policy regarding notice to parents, exception

Every city, town, regional school district or vocational school district implementing or maintaining curriculum which primarily involves human sexual education or human sexuality issues shall adopt a policy ensuring parental/guardian notification. Such policy shall afford parents or guardians the flexibility to exempt their children from any portion of said curriculum through written notification to the school principal. No child so exempted shall be penalized by reason of such exemption.

Said policy shall be in writing, formally adopted by the school committee as a school district policy and distributed by September first, nineteen hundred and ninety-seven, and each year thereafter to each principal in the district. A copy of each school district's policy must be sent to the department of education after adoption.

To the extent practicable, program instruction materials for said curricula shall be made reasonably accessible to parents, guardians, educators, school administrators, and others for inspection and review.

The department of education shall promulgate regulations for adjudicatory proceedings to resolve any and all disputes arising under this section.

Added by St.1996, c. 291.

§ 33. Repealed, 1979, 439, Sec. 1

§ 34. Support of schools; appropriations; recommendations

Every city and town shall annually provide an amount of money sufficient for the support of the public schools as required by this chapter, provided however, that no city or town shall be required to provide more money for the support of the public schools than is appropriated by vote of the legislative body of the city or town. In acting on appropriations for educational costs, the city or town appropriating body shall vote on the total amount of the appropriations requested and shall not allocate appropriations among accounts or place any restriction on such appropriations. The superintendent of schools in any city or town may address the local appropriating authority prior to any action on the school budget as recommended by the school committee notwithstanding his place of residence. The city or town appropriating body may make nonbinding monetary recommendations to

increase or decrease certain items allocating such appropriations.

The vote of the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation.

Amended by St.1939, c. 294; St.1979, c. 194, § 2; St.1980, c. 580, § 7; St.1981, c. 471; St.1981, c. 782, § 14; St.1992, c. 234; St.1996, c. 450, § 122.

Historical and Statutory Notes

C.L. c. 137.
C.L. c. 305.
St.1692–3, c. 26, § 5.
St.1701–2, c. 10, § 1.
St.1718–19, c. 2.
St.1789, c. 19, §§ 6, 7.
St.1826, c. 143, §§ 4, 10, 19.
St.1829, c. 116.
R.S.1836, c. 23, §§ 9, 32, 60, 61.
St.1859, c. 238.
St.1859, c. 252, §§ 4, 5.
G.S.1860, c. 38, §§ 12, 14, 15, 36.
St.1871, c. 145.
P.S.1882, c. 44, §§ 17, 19, 20, 46.
R.L.1902, c. 42, §§ 22 to 24, 49.
St.1919, c. 292, § 9.
St.1920, c. 78.

§ 34A. Transcript of student's record; availability

Any person operating or maintaining an educational institution within the commonwealth shall, upon request of any student or former student thereof, furnish to him a written transcript of his record as a student. There shall be no charge for any transcript originally furnished by any such person hereunder, but for any duplicate or additional transcript furnished hereunder a charge of not exceeding one dollar for each page, but not exceeding five dollars for an entire transcript, may be made by such person.

Added by St.1943, c. 547.

§ 34B. Remedy for failure to furnish transcript of student's record

In case any person subject to section thirty-four A shall refuse or neglect for thirty days after such request to furnish such a written transcript, the student or former student requesting the same or, if a minor, his guardian or next friend, may present to the superior court for the county within which such person so subject resides or such institution is located, or for the county of Suffolk, a petition addressed to said court and praying for such relief as it may deem proper in the circumstances; and thereupon such court shall have jurisdiction of such petition and may issue such orders relative thereto as it may deem proper, and any failure or refusal to obey any such order may be treated by the court as a contempt thereof. Upon any such petition the court may award costs and reasonable attorney's fees to the petitioner.

Added by St.1943, c. 547.

§ 34C. Repealed, 1965, 43

§ 34D. Student records; maintenance, storage, destruction, etc.; inspection by parent or guardian

The board of education shall adopt regulations relative to the maintenance, retention, duplication, storage and periodic destruction of student records by the public elementary and secondary schools of the commonwealth. Such rules and regulations shall provide that a parent or guardian of any pupil shall be allowed to inspect academic, scholastic, or any other records concerning such pupil which are kept or are required to be kept.

Added by St.1972, c. 213. Amended by St.1976, c. 50, § 1; St.1981, c. 460, § 1.

§ 34E. Inspection of student records; persons authorized

Each school committee shall, at the request of a parent or guardian of a student, allow such parent or guardian to inspect academic, scholastic, or any other records concerning such student that are kept or are required to be kept, regardless of the age of such student. Each school committee shall, at the request of a student eighteen years of age or older, allow such student complete access to all school records relative to him or her.

Added by St.1973, c. 785. Amended by St.1981, c. 460, § 2.

§ 34F. Repealed, 1976, 50, Sec. 2

§ 34G. Private schools; transfer of transcripts upon ceasing operation

In the event that any private educational institution providing a course of study through the twelfth grade level ceases operation, the owner or administrators shall transfer transcripts of all students or former students to the department of education; provided, however, that in the case of a student who is transferring to another private or public educational institution, such student's records shall be transferred to the school the student will be

attending, rather than to the department. The department may, upon request of a former student of an educational institution which has transferred transcripts pursuant to this provision, provide such student with a copy of his transcript. For the purposes of this section a transcript shall mean the documentary record or records which contain the name, address and phone number of the student, the student's birthdate, name, address and phone number of parent or guardian, course titles, grades, or equivalent thereof when grades are not applicable, course credit, grade level completed and the year completed. Said educational institution shall limit the student record information transmitted to the department to that required to be contained in the transcript.

Added by St.1983, c. 235, § 1.

§ 34H. Noncustodial parents; receipt of information for child enrolled in public elementary or secondary schools; notice to custodial parent

(a) Each public elementary and secondary school shall provide student records, including, but not limited to, the following information, in a timely and appropriate manner to the parents of a child enrolled in the school if the parents are eligible for information under this section and request the information in the manner set forth in this section: report cards and progress reports; the results of intelligence and achievement tests; notification of a referral for a special needs assessment; notification of enrollment in an English language learners program established under chapter 71A; notification of absences; notification of illnesses; notification of any detentions, suspensions or expulsion; and notification of permanent withdrawal from school. Each school shall also make reasonable efforts to ensure that other written information that is provided to the custodial parent but not specified in the preceding sentence be provided to the requesting parent if that parent is eligible for information under this section. All electronic and postal address and telephone number information relating to either the work or home locations of the custodial parent shall be removed from information provided under this section. Receipt of this information shall not mandate participation in any proceeding to which notification pertains, nor shall it authorize participation in proceedings and decisions regarding the child's welfare which are not granted through the award of custody. For purposes of this section, any parent who does not have physical custody of a child shall be eligible for the receipt of information unless: (1) the parent's access to the child is currently prohibited by a temporary or permanent protective order, except where the protective order, or any subsequent order which modifies the protective order, specifically allows access to the information described in this section; or (2) the parent is denied visitation or, based on a threat to the safety of the child, is currently denied legal custody of the child or is currently ordered to supervised visitation, and the threat is specifically noted in the order pertaining to custody or supervised visitation. All such documents limiting or restricting parental access to a student's records or information which have been provided to the school or school district shall be placed in the student's record.

(b) A parent requesting information under this section shall submit a written request to the school principal.

(c) Upon receipt of a request for information under this section, the school shall review the student record for any documents limiting or restricting parental access to a student's records or information which have been provided to the school or school district and shall immediately notify the custodial parent of the receipt of the request. Notification must be made by certified mail and by first class mail in both the primary language of the custodial parent and in English. The notification shall also inform the custodial parent that information requested under this section shall be provided to the requesting parent after 21 days unless the custodial parent provides to the principal of the school documentation of any court order which prohibits contact with the child, or prohibits the distribution of the information referred to in this section or which is a temporary or permanent order issued to provide protection to the child in the custodial parent's custody from abuse by the requesting parent unless the protective order or any subsequent order which modifies the protective order, specifically allows access to the information described in this section.

[There is no subsection (d).]

(e) At any time the principal of a school is presented with an order of a probate and family court judge which prohibits the distribution of information pursuant to this section the school shall immediately cease to provide said information and shall notify the requesting parent that the distribution of information shall cease.

(f) The principal of each public elementary and secondary school shall designate a staff member whose duties shall include the proper implementation of this section.

[There is no subsection (g).]

(h) The department of education shall promulgate regulations to implement the provisions of this section. Said regulations shall include provisions which assure that the information referred to in this section is properly marked to indicate that said information may not be used to support admission of the child to another school.

Added by St.1998, c. 285. Amended by St.2002, c. 218, § 7; St.2006, c. 62, §§ 1 to 3, eff. July 12, 2006.

§ 35. Beginning of term

In cities where no other provision is made in the charter thereof, the term of office of members of the school committee shall begin at the same time with that of the members of the city council.

Historical and Statutory Notes

St.1846, c. 223, § 1.
G.S.1860, c. 38, § 20.
P.S.1882, c. 44, § 25.
St.1865, c. 134.
R.L.1902, c. 42, § 25.

§ 36. Secretary; appointment; duties

The school committee shall appoint a secretary who shall keep a permanent record book, in which all its votes, orders and proceedings shall be recorded.

Historical and Statutory Notes

St.1838, c. 105, § 3.
G.S.1860, c. 38, § 22.
P.S.1882, c. 44, § 27.
R.L.1902, c. 42, § 26.

§ 36A. Orientation for school committee members

School committee members, within 1 year after their initial election or appointment, shall complete at least 8 hours of orientation concerning the responsibilities of their office at no cost to individual school committee members. The orientation shall include but not be limited to a review of school finance, the open meeting law, public records law, conflict of interest law, special education law, collective bargaining, school leadership standards and evaluations and the roles and responsibilities of school committee members. The orientation shall be provided by the Massachusetts Association of School Committees, Inc. or any other entity approved by the commissioner of education after consulting the association. The Association and any other entity providing such orientation shall offer every year at least 2 orientation sessions at no required cost to eligible school committees. A certificate shall be awarded to each participant upon completion of the orientation and notice thereof shall be filed with the clerk of the city or town where the school committee member resides.

Added by St.2002, c. 416.

§ 37. Powers and duties; superintendent serving joint districts

The school committee in each city and town and each regional school district shall have the power to select and to terminate the superintendent, shall review and approve budgets for public education in the district, and shall establish educational goals and policies for the schools in the district consistent with the requirements of law and statewide goals and standards established by the board of education. The school committee in each city, town and regional school district may select a superintendent jointly with other school committees and the superintendent shall serve as the superintendent of all of the districts that selected him.

Amended by St.1993, c. 71, § 35; St.2010, c. 188, § 59, eff. July 27, 2010.

Historical and Statutory Notes

G.S.1860, c. 38, § 16.
P.S.1882, c. 44, §§ 7, 21.
St.1883, c. 174, § 2.
St.1886, c. 236, § 2.
St.1898, c. 496, § 6.
R.L.1902, c. 42, § 27.
St.1918, c. 257, § 180.
St.1919, c. 5.
St.1920, c. 2.

§ 37A. Grants; acceptance and disbursement

School committees of cities and towns and regional district school committees may accept grants or gifts for educational purposes from federal, state, county and municipal governments or agencies thereof, charitable foundations and private corporations and disburse the same for such purposes. Any amounts so received by a school committee of a city or town shall be deposited with the treasurer of such city or town and held as a separate account, and expended by said school committee without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four. Any amounts so received by a regional district school committee shall be deposit-

ed with the treasurer of such regional school district and held as a separate account and expended by said committee.

Added by St.1958, c. 119. Amended by St.1981, c. 134.

§ 37B. Purchase of or making payments to annuities or investments

A school committee or a board of trustees of a vocational school may, on a day appointed, which shall be within ninety days of the opening of a school year, enter into a written agreement with any of its employees to purchase or make payments to an individual or group annuity contract, custodial account, or any other investment authorized under section 403(b) of the Internal Revenue Code for such employee; provided, however, that in no event shall the total of the premiums paid for the purchase of any such annuity, custodial account, or other investment and the employee's includible compensation for any year exceed the total annual salary or compensation under the existing salary schedule or classification plan applicable to such employee in such year. As used in this section, the words "includible compensation" shall have the same meaning as in said section 403(b) and the word "premiums" shall include contributions paid to any such custodial account or other investment. Such employee's rights under such annuity contract, custodial account or other investment shall be nonforfeitable. Any such contract shall be purchased only from an insurer authorized to issue life insurance or annuity contracts in the commonwealth; any such custodial account or other investment shall be purchased only from a company or corporation authorized to sell the same in the commonwealth; provided, however, that any such committee may agree with any employee or prospective employee who has any such annuity contract, custodial account or such other investment in force for at least ninety days prior to the effective date of such agreement to continue to make premium payments under such contract, account or investment subsequent to the effective date of such agreement, without regard to whether or not such contract, account or investment has been issued or sold by an entity authorized to issue or sell such contracts, accounts or other investments in the commonwealth, but in such case any subsequent contract shall be purchased only from an insurer authorized to issue life insurance or annuity contracts in the commonwealth, and any such custodial account or other investment shall be purchased only from a company or corporation authorized to sell such accounts or other investments in the commonwealth. Upon execution of such an agreement, the committee shall forthwith give written notice thereof to the treasurer or other payroll officer of the city, town or district, and shall certify the amount and dates of premiums payable under the terms of such contract, account or investment, the name of the issuing insurer or selling company or corporation and the office to which such premium payments shall be made. Said treasurer or other payroll officer shall transmit the premium payments so deducted to the issuing insurer or selling company or corporation within fourteen days of the deduction. Said treasurer or other payroll officer shall thereafter make such premium payments while such contract, account or investment is in force and such employee is actively employed by the committee and, upon written notice duly given by the committee, shall make any changes in the manner or amount of premium payments required under the terms of any subsequent contract, account or investment entered into by such employee and the committee, and shall stop such premium payments when so notified by the committee. A school committee shall not offer to a teacher any such annuity plan, custodial account or other investment to the exclusion of any other plan, custodial account or other investments, whether group or individual.

Added by St.1963, c. 466, § 3. Amended by St.1967, c. 769, § 4; St.1970, c. 279; St.1977, c. 224; St.1980, c. 564; St.1981, c. 112, § 1; St.1987, c. 348, § 2.

§ 37C. Promotion of racial balance

It is hereby declared to be the policy of the commonwealth to encourage all school committees to adopt as educational objectives the promotion of racial balance and the correction of existing racial imbalance in the public schools. The prevention or elimination of racial imbalance shall be an objective in all decisions involving the drawing or altering of school attendance lines, establishing of grade levels, and the selection of new school sites.

Added by St.1965, c. 641, § 1. Amended by St.1974, c. 636, § 4.

§ 37D. Racial imbalance; definitions; statistics; transfers; priorities; plans for elimination; public hearings; regulations; jurisdiction; costs; attorney's fees

As used in this section, sections thirty-seven C, *I*, and J, sections one *I* through one K of chapter

fifteen, and section twelve A of chapter seventy-six, the following terms shall, unless the context requires otherwise, have the following meanings:

"Racial imbalance", the condition of a public school in which more than fifty percent of the pupils attending such school are non-white.

"Racial balance", the condition of a public school in which more than thirty percent but not more than fifty percent of the pupils attending such school are non-white.

"Racial isolation", the condition of a public school in which not more than thirty percent of the pupils attending such school are non-white.

"Exempt school", a public school to which, prior to January first, nineteen hundred and seventy-four, the passing of a competitive examination was a condition of entrance; provided, however, that the school committee or regional district school committee having jurisdiction over such school shall, under the supervision of the board of education, establish and maintain an affirmative action program to recruit and assist non-white students to enter and to remain in attendance at such school.

The school committee of each city, town, and regional school district shall annually, at such time and in such form as the commissioner shall determine, submit to the commissioner statistics sufficient to enable a determination to be made of the percent of white and non-white pupils attending all public schools and attending each public school under the jurisdiction of each such committee. Whenever the board of education, in this section called the board, finds that racial imbalance exists in a public school, it shall in writing notify the school committee or regional district school committee having jurisdiction over such school that such finding has been made.

Any non-white pupil attending any public school in which racial imbalance exists shall have the right to be transferred to and to attend any other school, except an exempt school, of his parents' or guardian's choice for his grade level and under the jurisdiction of the same school committee or regional district school committee if racial isolation exists in such other school; and any white pupil attending any public school in which racial isolation exists shall have the right to be transferred to and to attend any other school, except an exempt school, of his parents' or guardian's choice for his grade level and under the jurisdiction of the same school committee or regional district school committee if racial imbalance exists in such other school. If a place is available for such pupil at such other school, such school committee or regional district school committee shall, forthwith upon receipt of written notice by his parents or guardian that they intend such pupil to exercise his right to be transferred to and to attend such other school, transfer such pupil to such other school. If no place is available for such pupil at such other school, such school committee or regional district school committee shall, upon receipt of such notice, formulate and, within the time limit established by regulations of the board, file with the board a plan to provide, within the same school year for which such notice is given, a place for such pupil at such other school and shall, within such time as may be prescribed by the board, implement either such plan as approved by the board or the mandatory plan of the board to provide such place and, when such place becomes available, transfer such pupil to such other school; provided, however, that the board may temporarily or permanently excuse such school committee or regional district school committee from implementing such plan or mandatory plan if an alternative place, satisfactory to the parents or guardian of such pupil, is available at another school to which such pupil may, as provided by this section, exercise his right to be transferred and attend, or if the board finds that there is other good cause to do so. Whenever a school committee or regional district school committee determines, in accordance with regulations of the board, that the number of places available at such other school is exceeded by the number of pupils exercising their rights to be transferred to and to attend such other school, the selection of particular pupils to be transferred to such places as are available shall be in accordance with regulations of the board, which regulations shall reasonably provide for priority for non-white pupils attending schools in which more than seventy percent of the pupils are non-white, without affecting the rights of such pupils not so selected to be transferred to and to attend such other school as provided by this section.

Any such plan so filed shall set forth in detail the proposed changes in existing school attendance districts, additions to existing school buildings, use of leased or portable facilities, changes in use of school buildings, and other measures to provide a place for such pupil at such other school. Any such plan shall take into consideration on an equal basis with reduction or elimination of racial imba-

lance the safety of pupils in their travelling between school and home. Any such plan may provide for voluntary cooperation by other cities, towns, or regional school districts in making facilities available or otherwise rendering assistance in implementing such plan. No change in any existing school attendance district shall be made pursuant to any such plan prior to a public hearing. Notice of the time and place of such hearing and of its subject matter shall be given by mail, postage prepaid, to the parents and guardian of each pupil affected by the proposed change and either by publication in a newspaper of general circulation in the city, town, or regional school district within which such attendance district lies once in each of two successive weeks, the first such publication to be not less than fourteen days prior to the day of such hearing, or, if there is no such newspaper, by posting such notice in a conspicuous place in the city or town hall of such city, town, or member towns of such regional school district for a period of not less than fourteen days prior to the day of such hearing. At such hearing any person, whether entitled to notice thereof or not, may appear in person or be represented by an agent who need not be an attorney.

The board shall adopt regulations for the administration of the provisions of this section relating to, but not necessarily limited to, determination of places available in schools, priorities for transfer and attendance, notification to parents and guardians of pupils of such pupils' rights to transfer and attendance, reporting and publication of places available in schools, time limits for filing of plans to provide places for pupils in schools, consolidation of such plans for filing, time limits and schedules for implementation of approved or mandatory plans to provide such places, progress reports on such implementation, and affirmative action programs.

The supreme judicial and superior courts shall have jurisdiction in equity over actions commenced by the board or by or on behalf of any pupil to enforce the provisions of this section; provided, however, that in any such action commenced by or on behalf of any pupil to enforce his right, as provided by this section, to be transferred to and to attend any school, which action is concluded in favor of such pupil, the school committee or regional district school committee having jurisdiction over such school shall be liable to such pupil or the person commencing such action on his behalf for his costs and reasonable attorney's fees.

Added by St.1965, c. 641, § 1. Amended by St.1969, c. 643; St.1971, c. 958; St.1974, c. 636, § 5.

§ 37E. Legal counsel for collective bargaining

The school committee of a city or town may employ legal counsel in connection with collective bargaining with employee organizations for school employees, and may expend money therefor from the funds appropriated by said city or town for school purposes provided, however, that no such money shall be expended in excess of twenty-five thousand dollars without the prior approval of the mayor, the city manager in a city having Plan D or Plan E form of government, or the board of selectmen. Said legal counsel shall not be subject to the provisions of section nine A of chapter thirty or the provisions of chapter thirty-one.

Added by St.1969, c. 128, § 1. Amended by St.1975, c. 141, § 2; St.1985, c. 523, § 2.

§ 37F. Legal counsel for general purposes

The school committee of a city or town may employ legal counsel for the general purposes of the committee and may expend money therefor from the funds appropriated by said city or town for school purposes. Said legal counsel shall not be subject to the provisions of section nine A of chapter thirty or the provisions of chapter thirty-one.

Added by St.1970, c. 362. Amended by St.1972, c. 86; St.1985, c. 523, § 3.

§ 37G. Corporal punishment of pupils prohibited; use of physical restraint; regulations

(a) The power of the school committee or of any teacher or any other employee or agent of the school committee to maintain discipline upon school property shall not include the right to inflict corporal punishment upon any pupil.

(b) The provisions of this section shall not preclude any member of the school committee or any teacher or any employee or agent of the school committee from using such reasonable force as is necessary to protect pupils, other persons, and themselves from an assault by a pupil. When such an assault has occurred, the principal shall file a detailed report of such with the school committee.

(c) The board of education shall promulgate regulations regarding the use of physical restraint for

students. Such regulations shall not preclude any teacher or employee or agent of the school from using reasonable force to protect pupils, other persons and themselves from an assault by a pupil as set forth above in section (b). Such regulations shall require training of all personnel authorized to administer any forms of restraint. Such regulations shall provide for procedures for notification to the department and to the parents.

Added by St.1972, c. 107, § 1. Amended by St.1982, c. 303; St.2000, c. 159, § 142.

§ 37H. Policies relative to conduct of teachers or students; student handbooks

The superintendent of every school district shall publish the district's policies pertaining to the conduct of teachers and students. Said policies shall prohibit the use of any tobacco products within the school buildings, the school facilities or on the school grounds or on school buses by any individual, including school personnel. Said policies shall further restrict operators of school buses and personal motor vehicles, including students, faculty, staff and visitors, from idling such vehicles on school grounds, consistent with section 16B of chapter 90 and regulations adopted pursuant thereto and by the department. The policies shall also prohibit bullying as defined in section 37*O* and shall include the student-related sections of the bullying prevention and intervention plan required by said section 37*O*. Copies of these policies shall be provided to any person upon request and without cost by the principal of every school within the district.

Each school district's policies pertaining to the conduct of students shall include the following: disciplinary proceedings, including procedures assuring due process; standards and procedures for suspension and expulsion of students; procedures pertaining to discipline of students with special needs; standards and procedures to assure school building security and safety of students and school personnel; and the disciplinary measures to be taken in cases involving the possession or use of illegal substances or weapons, the use of force, vandalism, or violation of a student's civil rights. Codes of discipline, as well as procedures used to develop such codes shall be filed with the department of education for informational purposes only.

In each school building containing the grades nine to twelve, inclusive, the principal, in consultation with the school council, shall prepare and distribute to each student a student handbook setting forth the rules pertaining to the conduct of students. The student handbook shall include an age-appropriate summary of the student-related sections of the bullying prevention and intervention plan required by section 37*O*. The school council shall review the student handbook each spring to consider changes in disciplinary policy to take effect in September of the following school year, but may consider policy changes at any time. The annual review shall cover all areas of student conduct, including but not limited to those outlined in this section.

Notwithstanding any general or special law to the contrary, all student handbooks shall contain the following provisions:

(a) Any student who is found on school premises or at school-sponsored or school-related events, including athletic games, in possession of a dangerous weapon, including, but not limited to, a gun or a knife; or a controlled substance as defined in chapter ninety-four C, including, but not limited to, marijuana, cocaine, and heroin, may be subject to expulsion from the school or school district by the principal.

(b) Any student who assaults a principal, assistant principal, teacher, teacher's aide or other educational staff on school premises or at school-sponsored or school-related events, including athletic games, may be subject to expulsion from the school or school district by the principal.

(c) Any student who is charged with a violation of either paragraph (a) or (b) shall be notified in writing of an opportunity for a hearing; provided, however, that the student may have representation, along with the opportunity to present evidence and witnesses at said hearing before the principal.

After said hearing, a principal may, in his discretion, decide to suspend rather than expel a student who has been determined by the principal to have violated either paragraph (a) or (b).

(d) Any student who has been expelled from a school district pursuant to these provisions shall have the right to appeal to the superintendent. The expelled student shall have ten days from the date of the expulsion in which to notify the superintendent of his appeal. The student has the right to counsel at a hearing before the superintendent. The subject matter of the appeal shall not be limited solely to a factual determination of whether the student has violated any provisions of this section.

(e) When a student is expelled under the provisions of this section, no school or school district within the commonwealth shall be required to admit such student or to provide educational services to said student. If said student does apply for admission to another school or school district, the superintendent of the school district to which the application is made may request and shall receive from the superintendent of the school expelling said student a written statement of the reasons for said expulsion.

Added by St.1972, c. 467. Renumbered and amended by St.1973, c. 430, § 5. Amended by St.1987, c. 285; St.1989, c. 603; St.1992, c. 133, § 430; St.1993, c. 71, § 36; St.1993, c. 380, § 1; St.1994, c. 51; St.2008, c. 386, § 1, eff. Mar. 16, 2009; St.2008, c. 451, § 50, eff. Jan. 5, 2009; St.2010, c. 92, §§ 3, 4, eff. May 3, 2010.

§ 37H½. Felony complaint or conviction of student; suspension; expulsion; right to appeal

Notwithstanding the provisions of section eighty-four and sections sixteen and seventeen of chapter seventy-six:

(1) Upon the issuance of a criminal complaint charging a student with a felony or upon the issuance of a felony delinquency complaint against a student, the principal or headmaster of a school in which the student is enrolled may suspend such student for a period of time determined appropriate by said principal or headmaster if said principal or headmaster determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school. The student shall receive written notification of the charges and the reasons for such suspension prior to such suspension taking effect. The student shall also receive written notification of his right to appeal and the process for appealing such suspension; provided, however, that such suspension shall remain in effect prior to any appeal hearing conducted by the superintendent.

The student shall have the right to appeal the suspension to the superintendent. The student shall notify the superintendent in writing of his request for an appeal no later than five calendar days following the effective date of the suspension. The superintendent shall hold a hearing with the student and the student's parent or guardian within three calendar days of the student's request for an appeal. At the hearing, the student shall have the right to present oral and written testimony on his behalf, and shall have the right to counsel. The superintendent shall have the authority to overturn or alter the decision of the principal or headmaster, including recommending an alternate educational program for the student. The superintendent shall render a decision on the appeal within five calendar days of the hearing. Such decision shall be the final decision of the city, town or regional school district with regard to the suspension.

(2) Upon a student being convicted of a felony or upon an adjudication or admission in court of guilt with respect to such a felony or felony delinquency, the principal or headmaster of a school in which the student is enrolled may expel said student if such principal or headmaster determines that the student's continued presence in school would have a substantial detrimental effect on the general welfare of the school. The student shall receive written notification of the charges and reasons for such expulsion prior to such expulsion taking effect. The student shall also receive written notification of his right to appeal and the process for appealing such expulsion; provided, however, that the expulsion shall remain in effect prior to any appeal hearing conducted by the superintendent.

The student shall have the right to appeal the expulsion to the superintendent. The student shall notify the superintendent, in writing, of his request for an appeal no later than five calendar days following the effective date of the expulsion. The superintendent shall hold a hearing with the student and the student's parent or guardian within three calendar days of the expulsion. At the hearing, the student shall have the right to present oral and written testimony on his behalf, and shall have the right to counsel. The superintendent shall have the authority to overturn or alter the decision of the principal or headmaster, including recommending an alternate educational program for the student. The superintendent shall render a decision on the appeal within five calendar days of the hearing. Such decision shall be the final decision of the city, town or regional school district with regard to the expulsion.

Upon expulsion of such student, no school or school district shall be required to provide educational services to such student.

Added by St.1993, c. 380, § 2.

§ 37I. Magnet school facilities; grants; application; approval; agreements; eligible costs; regulations

Notwithstanding any contrary provisions of law, including, but not limited to, chapter six hundred

forty-five of the acts of nineteen hundred and forty-eight, as amended, the board of education, in this section and section thirty-seven J called the board, may, subject to appropriation, make grants for the cost of providing magnet school facilities. For the purpose of this section, the term "magnet school facility" shall mean a public school or part thereof which meets such requirements as may be established by the board and attracts pupils from outside the neighborhood in which it is located for the purpose of reducing or eliminating racial imbalance or racial isolation, as defined in section thirty-seven D.

The school committee of any city or town or any regional district school committee may apply to the board for a grant to such city, town, or regional district school committee for all or part of the cost of providing a magnet school facility. Such application shall be in such form as may be prescribed by the board and shall be accompanied by such estimates and other information as the board may require. The board may approve any such application for a facility which meets such requirements and which is likely so to attract pupils so as to reduce or eliminate racial imbalance or racial isolation. The board shall notify such school committee or regional district school committee of its approval or disapproval of such application and, in the case of approval, of the estimated amount of the grant which the board will make.

After notification of approval, the board and such school committee or regional district school committee may enter into an agreement providing that such school committee or regional district school committee shall provide, within a reasonable time, such magnet school facility, as approved by the board, and that the commonwealth shall pay to such city, town or regional district school committee the amount of such grant. Any such agreement shall provide that such facility shall be operated in a manner designed to achieve racial balance therein or at the public school of which such facility is a part and that, whenever such school committee or regional district school committee determines, in accordance with regulations of the board, that the number of places available at such facility or school is exceeded by the number of pupils who have applied to be transferred to and to attend such facility or school, the selection of particular pupils to be transferred to and to attend such facility or school shall be in accordance with regulations of the board, which regulations shall reasonably provide for priority for those non-white pupils who are attending or otherwise would attend a racially imbalanced school and for those white pupils who are attending or otherwise would attend a racially isolated school.

The board may, subject to appropriation, make grants for the cost of providing magnet school facilities for the purpose of reducing or eliminating imbalance of minority students, as defined in the regulations promulgated under the federal Emergency School Aid Act, Title VII of Public Law 92–318, as amended.[1]

The following costs of providing a magnet school facility shall be eligible for any such grant:

(i) the average cost per pupil of educating each child who attends such facility or the public school of which such facility is a part, less the average cost per pupil of educating each such child at the public school which he otherwise would have attended; provided, however, that such costs shall be determined according to a method approved by the board, and that, to the extent possible, such method shall determine the average cost per pupil of educating each such child in the grade in which he is enrolled;

(ii) the cost of transportation of each child attending such magnet school facility;

(iii) the cost of planning and construction, reconstruction, enlargement, rehabilitation, or other improvement for the magnet school facility provided, however, that no such grant shall be for more than seventy-five percent of any such cost and

(iv) such other costs incidental to the provision of the magnet school facility as the board may approve.

The board may adopt regulations for the administration of the provisions of this section.

Added by St.1974, c. 636, § 8. Amended by St.1981, c. 708, § 2.

[1] See 20 U.S.C.A. § 1601 et seq. [Repealed].

§ 37J. Magnet educational programs; reimbursement for cost; definition; contracts; joining programs

The board of education may, subject to appropriation, reimburse any city, town or regional district for all or part of the cost of providing magnet educational programs within the public schools. Any such reimbursement shall be made only after certification by the board that such cost actually has been incurred, that such cost is reasonable, and that such program has met such requirements.

For the purpose of this section, the term "magnet educational program" shall mean educational measures including, but not limited to, planning and special services, instruction, or treatment of children, whether at the public schools or other public or private facility or place, which meet such requirements as may be established by the board for the purpose of providing such children with racially balanced educational experiences.

The board of education may contract with any other public or private facility for the purpose of purchasing magnet educational programs. Any city, town or regional district wanting to join in such a program shall so request the board in writing. The board shall approve all requests that meet the requirements as may be established. Any such contracts must be approved by a majority of the board provided that such cost is reasonable.
Added by St.1974, c. 636, § 8. Amended by St.1998, c. 463, § 63.

§ 37K. Business demonstration projects; disposition of proceeds

Each school committee may authorize business demonstration projects of an educational nature, to be operated by students as an educational service. Each such project shall be subject to all applicable health, safety and nutritional regulations.

Any such project may be operated independently of any other department or program in the school in which such project is operated. The net proceeds, after all expenses have been deducted, of any sale of food by any such project shall be transferred each month to the school lunch or food service account for the school in which such project is operated. Any such project serving food to a daily average of more than ten per cent of the students in the school, in which such project is located, in any given month, shall, during the remainder of the school year, be governed by the regulations of the school lunch program.
Added by St.1975, c. 456.

§ 37L. Notification to school personnel of reporting requirements for child abuse and neglect and fires; reports of students possessing or using dangerous weapons on school premises; transferred students' school records

The school committee of each city, town or regional school district shall inform teachers, administrators, and other professional staff of reporting requirements for child abuse and neglect under section 51A of chapter 119 and the reporting requirements for fires under section 2A of chapter 148.

In addition, any school department personnel shall report in writing to their immediate supervisor an incident involving a student's possession or use of a dangerous weapon on school premises at any time.

Supervisors who receive such a weapon report shall file it with the superintendent of said school, who shall file copies of said weapon report with the local chief of police, the department of children and families, the office of student services or its equivalent in any school district, and the local school committee. Said superintendent, police chief, and representative from the department of children and families, together with a representative from the office of student services or its equivalent, shall arrange an assessment of the student involved in said weapon report. Said student shall be referred to a counseling program; provided, however, that said counseling shall be in accordance with acceptable standards as set forth by the board of education. Upon completion of a counseling session, a follow-up assessment shall be made of said student by those involved in the initial assessment.

A student transferring into a local system must provide the new school system with a complete school record of the entering student. Said record shall include, but not be limited to, any incidents involving suspension or violation of criminal acts or any incident reports in which such student was charged with any suspended act.
Added by St.1987, c. 439. Amended by St.1993, c. 71, § 37; St.2006, c. 80, § 1, eff. Aug. 10, 2006; St.2008, c. 176, §§ 62, 63, eff. July 8, 2008.

§ 37M. Consolidation of administrative functions with city or town

(a) Notwithstanding the provisions of chapter forty-one or chapter seventy-one or any other special or general law to the contrary, any city or town which accepts the provisions of this section may consolidate administrative functions, including but not limited to financial, personnel, and maintenance functions, of the school committee with those of the city or town; provided, however, that such consolidation may occur only upon a majority vote of both the school committee and in a city, the city council, with approval of the mayor required

by law or in a town, the annual town meeting or in a town with no town meeting, the town council.

(b) Notwithstanding any general or special law to the contrary, a decision to consolidate functions pursuant to paragraph (a) of this section may be revoked by a majority vote of either the school committee of the city or town, or the city or town, or both as such vote is described in said paragraph (a).

Added by St.1992, c. 133, § 431. Amended by St.1996, c. 450, § 123.

§ 37N. Policy for school-sponsored student travel

Each school committee shall establish a policy concerning student travel sponsored by a school that is planned to occur between the hours of midnight and 6:00 a.m., or that will include an overnight stay away from a student's home. The policy shall address, but not be limited to, such issues as safety of transportation and accommodations, cost, including expectations for fundraising by students, time away from school, appropriateness of the trip for the grade level and the trip approval process. In adopting its policy, the school committee shall consider the model policy drafted by the board of education under section 1B of chapter 69.

Added by St.2002, c. 346, § 2.

§ 37O. School bullying prohibited; bullying prevention plans

(a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meaning:-

"Approved private day or residential school", a school that accepts, through agreement with a school committee, a child requiring special education pursuant to section 10 of chapter 71B.

"Bullying", the repeated use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at a victim that: (i) causes physical or emotional harm to the victim or damage to the victim's property; (ii) places the victim in reasonable fear of harm to himself or of damage to his property; (iii) creates a hostile environment at school for the victim; (iv) infringes on the rights of the victim at school; or (v) materially and substantially disrupts the education process or the orderly operation of a school. For the purposes of this section, bullying shall include cyber-bullying.

"Charter school", commonwealth charter schools and Horace Mann charter schools established pursuant to section 89 of chapter 71.

"Cyber-bullying", bullying through the use of technology or any electronic communication, which shall include, but shall not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications. Cyber-bullying shall also include (i) the creation of a web page or blog in which the creator assumes the identity of another person or (ii) the knowing impersonation of another person as the author of posted content or messages, if the creation or impersonation creates any of the conditions enumerated in clauses (i) to (v), inclusive, of the definition of bullying. Cyber-bullying shall also include the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons, if the distribution or posting creates any of the conditions enumerated in clauses (i) to (v), inclusive, of the definition of bullying.

"Collaborative school", a school operated by an educational collaborative established pursuant to section 4E of chapter 40.

"Department", the department of elementary and secondary education.

"Hostile environment", a situation in which bullying causes the school environment to be permeated with intimidation, ridicule or insult that is sufficiently severe or pervasive to alter the conditions of the student's education.

"Plan", a bullying prevention and intervention plan established pursuant to subsection (d).

"Perpetrator", a student who engages in bullying or retaliation.

"School district", the school department of a city or town, a regional school district or a county agricultural school.

"School grounds", property on which a school building or facility is located or property that is owned, leased or used by a school district, charter school, non-public school, approved private day or residential school, or collaborative school for a school-sponsored activity, function, program, instruction or training.

"Victim", a student against whom bullying or retaliation has been perpetrated.

(b) Bullying shall be prohibited: (i) on school grounds, property immediately adjacent to school grounds, at a school-sponsored or school-related activity, function or program whether on or off school grounds, at a school bus stop, on a school bus or other vehicle owned, leased or used by a school district or school, or through the use of technology or an electronic device owned, leased or used by a school district or school and (ii) at a location, activity, function or program that is not school-related, or through the use of technology or an electronic device that is not owned, leased or used by a school district or school, if the bullying creates a hostile environment at school for the victim, infringes on the rights of the victim at school or materially and substantially disrupts the education process or the orderly operation of a school. Nothing contained herein shall require schools to staff any non-school related activities, functions, or programs.

Retaliation against a person who reports bullying, provides information during an investigation of bullying, or witnesses or has reliable information about bullying shall be prohibited.

(c) Each school district, charter school, approved private day or residential school and collaborative school shall provide age-appropriate instruction on bullying prevention in each grade that is incorporated into the curriculum of the school district or school. The curriculum shall be evidence-based.

(d) Each school district, charter school, non-public school, approved private day or residential school and collaborative school shall develop, adhere to and update a plan to address bullying prevention and intervention in consultation with teachers, school staff, professional support personnel, school volunteers, administrators, community representatives, local law enforcement agencies, students, parents and guardians. The consultation shall include, but not be limited to, notice and a public comment period; provided, however, that a non-public school shall only be required to give notice to and provide a comment period for families that have a child attending the school. The plan shall be updated at least biennially.

Each plan shall include, but not be limited to: (i) descriptions of and statements prohibiting bullying, cyber-bullying and retaliation; (ii) clear procedures for students, staff, parents, guardians and others to report bullying or retaliation; (iii) a provision that reports of bullying or retaliation may be made anonymously; provided, however, that no disciplinary action shall be taken against a student solely on the basis of an anonymous report; (iv) clear procedures for promptly responding to and investigating reports of bullying or retaliation; (v) the range of disciplinary actions that may be taken against a perpetrator for bullying or retaliation; provided, however, that the disciplinary actions shall balance the need for accountability with the need to teach appropriate behavior; (vi) clear procedures for restoring a sense of safety for a victim and assessing that victim's needs for protection; (vii) strategies for protecting from bullying or retaliation a person who reports bullying, provides information during an investigation of bullying or witnesses or has reliable information about an act of bullying; (viii) procedures consistent with state and federal law for promptly notifying the parents or guardians of a victim and a perpetrator; provided, further, that the parents or guardians of a victim shall also be notified of the action taken to prevent any further acts of bullying or retaliation; and provided, further, that the procedures shall provide for immediate notification pursuant to regulations promulgated under this subsection by the principal or person who holds a comparable role to the local law enforcement agency when criminal charges may be pursued against the perpetrator; (ix) a provision that a student who knowingly makes a false accusation of bullying or retaliation shall be subject to disciplinary action; and (x) a strategy for providing counseling or referral to appropriate services for perpetrators and victims and for appropriate family members of said students. The plan shall afford all students the same protection regardless of their status under the law.

A school district, charter school, non-public school, approved private day or residential school or collaborative school may establish separate discrimination or harassment policies that include categories of students. Nothing in this section shall prevent a school district, charter school, non-public school, approved private day or residential school or collaborative school from remediating any discrimination or harassment based on a person's membership in a legally protected category under local, state or federal law.

The plan for a school district, charter school, approved private day or residential school and collaborative school shall include a provision for ongoing professional development to build the

skills of all staff members, including, but not limited to, educators, administrators, school nurses, cafeteria workers, custodians, bus drivers, athletic coaches, advisors to extracurricular activities and paraprofessionals, to prevent, identify and respond to bullying. The content of such professional development shall include, but not be limited to: (i) developmentally appropriate strategies to prevent bullying incidents; (ii) developmentally appropriate strategies for immediate, effective interventions to stop bullying incidents; (iii) information regarding the complex interaction and power differential that can take place between and among a perpetrator, victim and witnesses to the bullying; (iv) research findings on bullying, including information about specific categories of students who have been shown to be particularly at risk for bullying in the school environment; (v) information on the incidence and nature of cyber-bullying; and (vi) internet safety issues as they relate to cyber-bullying. The department shall identify and offer information on alternative methods for fulfilling the professional development requirements of this section, at least 1 of which shall be available at no cost to school districts, charter schools, approved private day or residential schools and collaborative schools.

The plan shall include provisions for informing parents and guardians about the bullying prevention curriculum of the school district or school and shall include, but not be limited to: (i) how parents and guardians can reinforce the curriculum at home and support the school district or school plan; (ii) the dynamics of bullying; and (iii) online safety and cyber-bullying.

The department shall promulgate rules and regulations on the requirements related to a principal's duties under clause (viii) of the second paragraph of this subsection; provided, that school districts, charter schools, approved private day or residential schools and collaborative schools shall be subject to the regulations. A non-public school shall develop procedures for immediate notification by the principal or person who holds a comparable role to the local law enforcement agency when criminal charges may be pursued against the perpetrator.

(e)(1) Each school district, charter school, non-public school, approved private day or residential school and collaborative school shall provide to students and parents or guardians, in age-appropriate terms and in the languages which are most prevalent among the students, parents or guardians, annual written notice of the relevant student-related sections of the plan.

(2) Each school district, charter school, non-public school, approved private day or residential school and collaborative school shall provide to all school staff annual written notice of the plan. The faculty and staff at each school shall be trained annually on the plan applicable to the school. Relevant sections of the plan relating to the duties of faculty and staff shall be included in a school district or school employee handbook.

(3) The plan shall be posted on the website of each school district, charter school, non-public school, approved private day or residential school and collaborative school.

(f) Each school principal or the person who holds a comparable position shall be responsible for the implementation and oversight of the plan at his school.

(g) A member of a school staff, including, but not limited to, an educator, administrator, school nurse, cafeteria worker, custodian, bus driver, athletic coach, advisor to an extracurricular activity or paraprofessional, shall immediately report any instance of bullying or retaliation the staff member has witnessed or become aware of to the principal or to the school official identified in the plan as responsible for receiving such reports or both. Upon receipt of such a report, the school principal or a designee shall promptly conduct an investigation. If the school principal or a designee determines that bullying or retaliation has occurred, the school principal or designee shall (i) notify the local law enforcement agency if the school principal or designee believes that criminal charges may be pursued against a perpetrator; (ii) take appropriate disciplinary action; (iii) notify the parents or guardians of a perpetrator; and (iv) notify the parents or guardians of the victim, and to the extent consistent with state and federal law, notify them of the action taken to prevent any further acts of bullying or retaliation.

(h) If an incident of bullying or retaliation involves students from more than one school district, charter school, non-public school, approved private day or residential school or collaborative school, the school district or school first informed of the bullying or retaliation shall, consistent with state and federal law, promptly notify the appropriate administrator of the other school district or school so that both may take appropriate action. If an incident of bullying or retaliation occurs on school

grounds and involves a former student under the age of 21 who is no longer enrolled in a local school district, charter school, non-public school, approved private day or residential school or collaborative school, the school district or school informed of the bullying or retaliation shall contact law enforcement consistent with the provisions of clause (viii) of the second paragraph of subsection (d).

(i) Nothing in this section shall supersede or replace existing rights or remedies under any other general or special law, nor shall this section create a private right of action.

(j) The department, after consultation with the department of public health, the department of mental health, the attorney general, the Massachusetts District Attorneys Association and experts on bullying shall: (i) publish a model plan for school districts and schools to consider when creating their plans; and (ii) compile a list of bullying prevention and intervention resources, evidence-based curricula, best practices and academic-based research that shall be made available to schools. The model plan shall be consistent with the behavioral health and public schools framework developed by the department in accordance with section 19 of chapter 321 of the acts of 2008. The resources may include, but shall not be limited to, print, audio, video or digital media; subscription based online services; and on-site or technology-enabled professional development and training sessions. The department shall biennially update the model plan and the list of the resources, curricula, best practices and research and shall post them on its website.

Added by St.2010, c. 92, § 5, eff. May 3. 2010.

§ 38. Employment of teachers, aides, principals, etc.; designation of Horace Mann teachers; performance evaluations; performance standards

No school district shall require that an individual reside within the city, town or regional school district as a condition of promotion, assignment, transfer or continued employment as a school teacher, instructional aide, assistant principal, principal, director, supervisor, deputy superintendent or professional employee; provided, however, that the provisions of this paragraph shall not apply to any individual appointed, reappointed or promoted to the position of superintendent, associate superintendent or assistant superintendent.

Subject to the collective bargaining provisions of chapter one hundred and fifty E, the school committee may designate each year Horace Mann teachers who meet the requirements and guidelines developed by the board of education pursuant to section one G of chapter fifteen. Any position designated as a Horace Mann teacher shall be included in an appropriate teacher collective bargaining unit. Each year the school committee may designate Horace Mann teachers who meet the requirements and guidelines developed by the board of education; provided, however, that a teacher may not be designated as a Horace Mann teacher more than two consecutive years.

The superintendent, by means of comprehensive evaluation, shall cause the performance of all teachers, principals, and administrators within the school district to be evaluated using any principles of evaluation established by the board of education pursuant to section one B of chapter sixty-nine and by such consistent, supplemental performance standards as the school committee may require, including the extent to which students assigned to such teachers and administrators satisfy student academic standards or, in the case of a special education student, the individual education plan, and the successful implementation of professional development plans required under section thirty-eight Q; provided, however, that such principles and standards be consistent with the anti-discrimination requirements of chapter one hundred and fifty-two B. The superintendent shall require the evaluation of administrators and of teachers without professional teacher status every year and shall require the evaluation of teachers with professional teacher status at least once every two years. The procedures for conducting such evaluations, but not the requirement for such evaluations, shall be subject to the collective bargaining provisions of chapter one hundred and fifty E.

Performance standards for teachers and other school district employees shall be established by the school committee upon the recommendation of the superintendent, provided that where teachers are represented for collective bargaining purposes, all teacher performance standards shall be determined as follows: The school committee and the collective bargaining representative shall undertake for a reasonable period of time to agree on teacher performance standards. Prior to said reasonable period of time, the school district shall seek a public hearing to comment on such standards. In the absence of an agreement, after such reasonable

period, teacher performance standards shall be determined by binding interest arbitration. Either the school district or the teachers' collective bargaining representative may file a petition seeking arbitration with the commissioner of education. The commissioner shall forward to the parties a list of three arbitrators provided by the American Arbitration Association. The school committee and the collective bargaining representative within three days of receipt of the list from the commissioner of education shall have the right to strike one of the three arbitrators' names if they are unable to agree upon a single arbitrator from among the three. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association to be consistent with the provisions of this section. In reaching a decision, the arbitrator shall seek to advance the goals of encouraging innovation in teaching and of holding teachers accountable for improving student performance. The arbitrator shall consider the particular socio-economic conditions of the student population of the school district. Both the parties and the arbitrator may adopt performance standards established by state or national organizations. The performance standards shall be incorporated into the applicable collective bargaining agreement; provided, however, that any subsequent modification of the performance standards shall be made pursuant to the procedures set forth in this section.

The results of such evaluations may be used in decisions to dismiss, demote or remove a teacher or administrator pursuant to sections forty-two, forty-two A and sixty-three.

Each school district shall conduct evaluations of teachers and administrators in accordance with the regulations of the board and shall be reimbursed for reasonable costs incurred thereby in accordance with section sixty of chapter fifteen.

Amended by St.1960, c. 333, § 2; St.1965, c. 164; St.1970, c. 780; St.1971, c. 507; St.1974, c. 342; St.1978, c. 100; St.1981, c. 96; St.1985, c. 188, § 14; St.1985, c. 577; St.1986, c. 118; St.1988, c. 153, § 1; St.1989, c. 261; St.1993, c. 71, §§ 38 to 40.

Historical and Statutory Notes

St.1838, c. 105, § 2.
St.1859, c. 60.
G.S.1860, c. 38, § 23.
P.S.1882, c. 44, § 28.
St.1891, c. 159.
St.1894, c. 329, § 4.
R.L.1902, c. 42, § 28.

§ 38A. Duties; appointment of director of occupational guidance, duties of director

The school committee of a town not in an occupational guidance and placement district may employ a director or directors of occupational guidance and placement, approved by the department prior to his or their appointment, and may fix his or their compensation, and a director employed under this section shall, under the direction and control of the supervisor of guidance and placement provided for in section six B of chapter fifteen, give his whole time to the occupational and employment problems of the young people between the ages of sixteen and twenty-three in said town. He shall use all means available to furnish occupational guidance and secure employment opportunities for such persons. Every such director may consult with and seek the advice of said supervisor, and shall make an annual report to the committee and forward a copy thereof to said supervisor.

Added by St.1941, c. 676, § 2.

§ 38B. Repealed, 1978, 367, Sec. 70E

§ 38C. Status of director of occupational guidance

Every such director of occupational guidance and placement shall be deemed to be a regularly appointed teacher in the school system of the town by which he is employed, and shall be subject to the provisions of this chapter relating to teachers.

Added by St.1941, c. 676, § 2.

§ 38D. District directors of occupational guidance; appointment

Two or more towns may, by vote of each, form a district for the purpose of employing a director of occupational guidance and placement, who shall annually be appointed by a joint committee composed of the chairman and secretary of the school committee of each of said towns. The committee shall determine the relative amount of service to be performed by him in each town, fix his salary, apportion the amount thereof to be paid by each town, and certify the same to each town treasurer. Any constituent town may, by vote passed prior to December first in any year, withdraw from the district, with the approval of the department, such withdrawal to become effective on June thirtieth

following. No city may join in forming such a district.
Added by St.1941, c. 676, § 2.

§ 38E. Repealed, 1978, 367, Sec. 70E

§ 38F. Fees for services of directors of occupational guidance; prohibition; penalty for violation

A director of occupational guidance and placement who accepts any commission, fee, compensation or reward of any kind for obtaining a position for any person shall be punished by a fine of not more than five hundred dollars, and upon conviction his office shall immediately become vacant.
Added by St.1941, c. 676, § 2.

§ 38G. Certification for certain teaching and administrative positions; provisional and standard certificates; policies and guidelines regarding requirements and qualifications; applications; recommendations; review; continuing education; renewal of certificate

As used in this section the following words shall have the following meanings:

"Board", the board of education established by chapter fifteen.

"Provisional educator", a person who holds a provisional educator certificate.

"Provisional educator with advanced standing", a person who holds a provisional educator certificate with advanced standing; said certificate shall be valid for five years of employment as an educator in the schools of the commonwealth and may be renewed for an additional five years of employment in accordance with regulations adopted by the board.

"Provisional educator certificate", a license to teach issued to a person who has successfully met the preparation and eligibility requirements as established by the board. The provisional educator's certificate shall be valid for five years of employment as an educator in the schools of the commonwealth.

"Provisional educator certificate with advanced standing", a license to teach issued to a person who has successfully met the preparation and eligibility requirements as established by the board for provisional certification and completed (1) a college program, graduate or undergraduate, approved by the board of education for the preparation of teachers; or (2) a college preparation program included in the National Association of State Directors of Teacher Education and Certification (NASDTEC); or (3) an out of state teacher education program approved by the National Council for the Accreditation of Teacher Education (NCATE); or (4) other program approved by the board.

"Regionally licensed or certified educator", an applicant for a teacher's certificate in Massachusetts who has been granted a regional license or certificate by another state jurisdiction under terms of a contract entered into pursuant to chapter seven hundred and forty-eight of the acts of nineteen hundred and sixty-eight, the Interstate Agreement on Certification of Educational Personnel. Such certificate shall be equivalent to the provisional educator certificate with advanced standing.

"Reciprocity of certified educators", the process and requirements established by the commissioner for candidates to obtain certification who have completed (1) a college preparation program included in the alternative certification reciprocity system of the National Association of State Directors of Teacher Education and Certification (NASDTEC); (2) out-of-state programs approved by the National Council for the Accreditation of Teacher Education (NCATE); or (3) other programs approved by the board. Such certificate shall be equivalent to the provisional educator with advanced standing certificate.

"Standard educator", a person who holds a standard educator certificate.

"Standard educator certificate", a license to teach issued to a person who has successfully met the preparation and eligibility requirements as established by the board. The standard educator's certificate shall be valid for renewable terms of five years.

"Temporary certificate", a license to teach which the commissioner of education may, at his discretion, issue to a person who holds a valid teaching certificate from another state and who has been employed under the certificate for a minimum of three years but has not satisfied the certification testing requirements contained in this section. The temporary certificate shall be valid for one year and is nonrenewable. Service under a temporary certificate shall be counted as service in acquiring

professional teacher status, contingent upon the teacher passing the applicable certification tests.

The commissioner of education shall have authority to grant, upon application, provisional educator, provisional educator with advanced standing, temporary, and standard educator certificates to persons who have satisfied the requirements for such certificates as established by the board. The board shall define the knowledge of subject matter and demonstration of competencies commensurate with attainment and renewal of such certificates.

To be eligible for certification as a provisional educator, the candidate shall (1) hold a bachelor's degree in arts or sciences from an accredited college or university with a major course in the arts or sciences appropriate to the instructional field; (2) pass a test established by the board which shall consist of two parts: (A) a writing section which shall demonstrate the communication and literacy skills necessary for effective instruction and improved communication between school and parents; and (B) the subject matter knowledge for the certificate; and (3) be of sound moral character. Candidates who complete the requirements in this paragraph shall be issued provisional educator certificates which will permit them to seek employment in teaching positions requiring instructional certification in districts which have an approved provisional educator preparation program.

The commissioner shall establish standards for the training, support and supervision of provisional educators. During the period of employment, a person holding a provisional teaching certificate pursuant to this section shall be under the direct supervision of the principal or other appropriate supervisor who shall regularly observe and evaluate the performance of assigned duties by such holder of a provisional teaching certificate. Such evaluation shall be according to relevant to[1] nationally recognized professional standards for personnel evaluation.

Each public school district seeking to hire a provisional educator must submit an provisional educator program plan to the department of education. No district shall be authorized to employ a provisional educator unless it has submitted a plan for such a program and received approval of the commissioner. Each plan shall describe the key elements of the proposed provisional educator program in accordance with guidelines established and published by the department. Such guidelines shall require that provisional educators in district-based programs meet the equivalent standards that provisional educators with advanced standing meet in approved college and university programs. Districts shall show either evidence of joint sponsorship or collaboration of training programs with (1) colleges or universities, or (2) other districts, or (3) other programs approved by the commissioner to provide such programs. The department shall issue standard district plans which districts may implement in lieu of developing original plans. The department shall coordinate the training efforts of districts, shall insure that district programs meet fair, substantive and comprehensive professional development standards and shall establish regional programs for provisional educators. The department shall also provide orientation programs for support team members. Provisional educators shall be observed by a professional support team. The department of education shall devise standardized criteria for a final comprehensive evaluation of each provisional educator, conducted at the end of the provisional educator period by the professional support team. All such evaluations shall be conducted according to nationally recognized professional standards for personnel evaluation.

At the conclusion of each year of the approved district training program for provisional educators, the chairperson of the support team shall prepare a comprehensive evaluation report of the provisional educator's performance. Such report shall be submitted by the chairperson directly to the department of education. The final comprehensive evaluation report on each provisional educator shall be made on forms provided by the department of education. Said report shall include an assessment of the individual's on the job performance and one of the following recommendations:

(1) Approved: recommends that advanced standing status be granted upon completion of the other preparation and eligibility requirements as established by the board;

(2) Insufficient: recommends that the candidate be allowed to seek entry in the future into a district training program; or a candidate found insufficient twice shall not be allowed to enter another district training program; or

(3) Disapproved: recommends that advanced standing status not be granted and that the candidate not be allowed to enter into a district training program.

The support team chairperson shall provide the provisional educator with a copy of the written

evaluation report and certification recommendation before submitting it to the commissioner of education.

If the recommendation is to disapprove, the provisional educator may, within fifteen days, submit to the chairperson written materials documenting the reasons why the provisional educator believes his provisional educator certification should continue to remain valid or a recommendation of insufficient granted. The chairperson shall forward all such documentation to the commissioner of education along with the evaluation report and recommendation concerning certification.

Candidates who receive a recommendation of "disapproved" or two or more recommendations of "insufficient" may appeal to the commissioner for approval of additional opportunities to seek provisional educator employment in districts other than those in which they received unfavorable recommendations. The candidate shall be responsible for demonstrating why he would be likely to succeed if granted the requested opportunity.

To be eligible for certification as a provisional educator with advanced standing, the candidate shall provide evidence that he (1) holds a bachelor's degree in arts or sciences from an accredited college or university with a major course in the arts or sciences appropriate to the instructional field or the equivalent baccalaureate degree; (2) has passed a test established by the board which shall consist of two parts: (A) a writing section which shall demonstrate the communication and literacy skills necessary for effective instruction and improved communication between school and parents; and (B) the subject matter knowledge for the certificate; (3) has satisfactorily completed a board of education approved teacher preparation program; and (4) is of sound moral character. A candidate who completes the requirements of this paragraph shall be issued a provisional educator certificate with advanced standing which will permit him to seek employment in a teaching position requiring instructional certification.

Each public school district seeking to hire a provisional educator with advanced standing must submit a plan to the department of education which details how the district will supervise and support such provisional educators with advanced standing. No district shall be authorized to employ a provisional educator with advanced standing unless it has submitted a plan for the support and evaluation of such educator to the commissioner and received the approval of the commissioner. The department of education shall issue standard plans for provisional educators with advanced standing which districts may implement in lieu of developing an original plan.

In not less than one year after the issuance of a provisional educator certificate, the commissioner upon receipt of a proper application shall issue a standard educator certificate to such provisional certificate holder who has provided the commissioner with evidence, in such manner and form as prescribed by the board, that he has met the preparation and eligibility requirements set by the board through a master's degree program approved by the commissioner, or through an equivalent district program for standard certification approved by the commissioner, or other equivalent programs approved by the commissioner; and has met the requirements set by the commissioner for demonstration of successful performance.

Each standard educator certificate shall be valid for five years and continued every five years thereafter upon the successful completion of an individual professional development plan that meets the subject matter knowledge and teaching skill requirements set by the board. Such plan shall be designed to increase the ability of the person to improve student learning.

Certificates granted by the board prior to October first, nineteen hundred and ninety-four are hereby deemed standard certificates which shall be renewed every five years. All such certificates must be renewed by June eighteenth, nineteen hundred and ninety-nine.

The commissioner shall develop alternative paths for certifying school management and educational leadership personnel which shall facilitate a process whereby persons with significant managerial experience can obtain such certification.

Any certificate issued by the commissioner may be revoked for cause, pursuant to standards and procedures established by the board.

The board shall have the authority to promulgate, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this section. Such regulations shall be presented to the joint committee for informational purposes ninety days before implementation.

All applications for any certificates granted under this section shall be accompanied by a fee to be determined annually by the commissioner of ad-

ministration under the provisions of section three B of chapter seven. Said fees shall be established and limited to allow the department to carry out the certification and recertification responsibilities but in no case shall said applications exceed one hundred dollars per year with an annual increase no greater than the consumer price index.

Notwithstanding the foregoing, the board shall establish for each certification area alternate methods for fulfilling the professional development requirement, at least one of which shall be provided at no cost to persons employed by a school district, including paraprofessionals or assistant teachers, who are engaging in such activity for the purpose of satisfying the professional development requirement of this section.

No person shall be eligible for employment as a teacher, guidance counselor, director, school psychologist, school adjustment counselor, school social worker, school nurse, library media specialist, school business administrator, principal, supervisor, director, assistant superintendent of school, and superintendent of schools by a school district unless he has been granted by the commissioner a provisional, or standard certificate with respect to the type of position for which he seeks employment; provided, however, that nothing herein shall be construed to prevent a school committee from prescribing additional qualifications; and provided further, that a superintendent may upon request be exempt by the commissioner for any one school year from the requirement in this section to employ certified personnel when compliance therewith would in the opinion of the commissioner constitute a great hardship in securing teachers for that school district. During the time that such a waiver is in effect, service of an employee of a school district to whom the waiver applies shall not be counted as service in acquiring professional teacher status or other rights under section forty-one.

In addition to any other requirements of this section, the board shall require, as a provision of an administrator's or educator's initial certification, that all educators and administrators shall have training in strategies for effective inclusive schooling for children with disabilities, instruction of students with diverse learning styles and classroom organization and management. Such training shall include, at a minimum, practical experience in the application of these strategies.

In addition to any other requirements in this section, in order to receive a provisional or standard educator certificate, persons applying for such certification shall have completed such courses or training sessions as the board shall require in second language acquisition.

Competence in Braille instruction shall be a requirement for initial certification as a teacher of students with vision impairments. Such competence shall be verified through a testing program which meets the standards of the Library of Congress National Library Service for the Blind or its successor.

For the purposes of certifying educators, the board shall establish policies and guidelines and the commissioner may approve preparation programs devoted to the preparation of teachers and other educational personnel. A college or university or school or district or other institution offering such an approved program shall certify to the commissioner that a student has demonstrated satisfactory competence in the skills and knowledge expected of college graduates in the most advanced nations, and has completed the program approved. The college or university or school district or other institution shall also provide the commissioner with a transcript of the student's record.

At the end of each five-year period each standard educator shall attest to and provide appropriate supporting evidence and documentation to the state department of education, in such form and at such time as the commissioner shall prescribe, that the standard educator has successfully completed a professional development plan which meets the standards set by the board.

In addition to any other requirements of this section, the board shall require, as a provision of an administrator's or educator's recertification, that all educators and administrators shall have training in strategies for effective inclusive schooling for children with disabilities, instruction of students with diverse learning styles and classroom organization and management. Such training shall include, at a minimum, practical experience in the application of these strategies.

It shall be one of the objectives of all school districts' professional development plans to satisfy the individual professional development plans required by this section; provided, however, that this requirement shall not be construed to require that a school district or the commonwealth provide funding for the fulfillment of the professional development requirements of this section and section thirty-eight Q beyond the foundation budget.

The board shall establish policies and guidelines for approval for any continuing education units, inservice seminars, projects, courses and other activities which would be deemed sufficient to maintain the development of professional skills and the knowledge of subject matter pertinent to particular certificates in accordance with the same procedures used for initial approval of collegiate preparation programs. The commissioner shall establish for each certification alternate methods for fulfilling the professional development requirement, at least one of which must be at no cost to persons employed by a school district who are engaging in such an activity for the purpose of satisfying the professional development requirements for recertification of this section.

Such policies shall provide that a teacher who is to be employed in a position in an area of certification in which he is not currently employed, but for which he held a certificate which had been valid within five years immediately preceding the starting date of employment in this position, shall be given a reasonable period, as determined by the board, to fulfill a professional development plan which demonstrates currency in the subject matter knowledge and requalify him for certification in said area. In every instance, all evaluations and assessments shall follow nationally recognized professional standards.

Each local and regional school district shall attest to the department of education, in such form and at such time as the commissioner shall prescribe, that professional development activities for which credit toward certification renewal is granted meet the requirements set by the board and are documented in accordance with procedures established by the board.

The board shall, in establishing said policies and criteria for professional development, give special consideration to the best interests of the students in the commonwealth, including the need for high quality teachers of English language learners programs established under chapter 71A for limited English proficient students and the need to maintain the highest performance standards of teachers while taking into proper consideration the financial or time constraints these policies may require. In developing such policies, guidelines and assessment methods, the board shall obtain the input of teachers, administrators, educational experts, parents, business leaders and others interested in the improvement of the professional status of teachers.

Except as otherwise specifically provided in this section, no rights of any employees of a school district under the provision of this chapter shall be impaired by the provisions of this section.

Anyone granted either a provisional or standard certificate under this section or currently holding such certification shall be required to maintain the development of professional skills and the knowledge of subject matter pertinent to the areas of certification.

Teachers who were authorized, permitted or approved to teach in a subject or area for which there was no certification standard before September first, nineteen hundred and eighty-two, shall acquire and maintain the development of the skills and training required of persons certified to teach in said subject or areas after that date.

This section shall not apply to trade, vocational, temporary substitute teachers, exchange teachers, regionally licensed or certified teachers or to teaching or administrative interns; provided, however, that approval for the employment of such personnel shall be generated by the board under such rules and regulations as it may adopt.

The requirements of this section shall not apply to the certification of teachers of adult education. Nothing in this section or section 1H of chapter 69 shall be construed to prohibit a school committee from employing a teacher certified under this section to teach adult education.

Added by St.1951, c. 278, § 1. Amended by St.1952, c. 530; St.1953, c. 264; St.1956, c. 122; St.1960, c. 20, § 1; St.1960, c. 333, § 1; St.1965, c. 172; St.1965, c. 345; St.1968, c. 599; St.1970, c. 454, §§ 1, 2; St.1972, c. 64; St.1972, c. 684, § 5; St.1973, c. 847, § 5; St.1980, c. 572, § 25; St.1985, c. 188, § 15; St.1989, c. 467; St.1991, c. 151; St.1993, c. 71, § 41; St.1993, c. 495, § 26; St.1995, c. 209, § 1; St.1996, c. 275; St.1996, c. 374, § 3; St.1996, c. 450, §§ 124 to 126; St. 1998, c. 194, § 127; St.2000, c. 159, §§ 143, 144; St.2000, c. 264; St.2000, c. 284, §§ 1, 2; St.2002, c. 218, §§ 8, 9.

1 So in enrolled bill.

§ 38H. School librarian and school library supervisor or co-ordinator; tenure

Every school librarian and school library supervisor or co-ordinator appointed by a school committee shall acquire tenure in the school system of the city or town in which he is employed subject to the provisions of section forty-one, relating to tenure for teachers, and of sections forty-two and

forty-three A, relating to dismissal, suspension and discharge and of appeals therefrom.

Added by St.1965, c. 276.

§ 38*I*. Reimbursement of teachers for tuitions and fees

The school committee of any city or town may, under regulations prescribed by the school committee, reimburse teachers for tuition and fees incurred by such teachers for upgrading skills and improving proficiency.

Added by St.1966, c. 143.

§ 38J. Repealed, 1995, 209, Sec. 2

§ 38K. Public relations bureau in school departments; establishment

In cities having a population of over one hundred thousand, the school committee may establish within the school department a bureau of public relations for the purpose of improving public relations between the school department and the community. Said bureau shall be under the control of a director, and such other assistants as the committee deems necessary may be employed to carry out the purpose of such bureau. The director and assistants appointed under the provisions of this section shall be exempt from the provisions of chapter thirty-one.

Added by St.1970, c. 434.

§ 38L. Repealed, 1978, 512, Sec. 12

§ 38M. Student advisory committees

School committees of cities, towns and regional school districts shall meet at least once every other month, during the months school is in session, with a student advisory committee to consist of five members to be composed of students elected by the student body of the high school or high schools in each city, town or regional school district.

The members of such student advisory committees shall, by majority vote prior to the first day of June in each year elect from their number a chairperson who shall serve for a term of one year. Said chairperson shall be an ex-officio, nonvoting member of the school committee, without the right to attend executive sessions unless such right is expressly granted by the individual school committee. Said chairperson shall be subject to all school committee rules and regulations and shall serve without compensation.

Added by St.1972, c. 95. Amended by St.1987, c. 164.

§ 38N. Proposed annual budgets; public hearings required; quorum

The school committee of each city, town or regional school district shall hold a public hearing on its proposed annual budget not less than seven days after publication of a notice thereof in a newspaper having general circulation in such city, town or district. Prior to such public hearing said committee shall make available to the public at least one copy of said proposed budget for a time period of not less than forty-eight hours either at the office of the superintendent of schools or at a place so designated by said committee. At the time and place so advertised or at any time or place to which such hearing may from time to time be adjourned all interested persons shall be given an opportunity to be heard for or against the whole or any part of the proposed budget. Such hearing shall be conducted by a quorum of the school committee. For the purposes of this section a quorum shall consist of a majority of the members of said school committee.

Added by St.1972, c. 136. Amended by St.1978, c. 126; St.1979, c. 400.

§ 38*O*. Sex education advisory committees

In any city, town or regional school district which accepts this section, the school committee shall meet at least once every other month with an advisory committee which shall advise said school committee concerning reading, visual aid and all other material pertaining to sex education. Said committee shall consist of eleven members, one of whom shall be a physician and seven of whom shall be parents of children attending a school of such city, town or regional school district. The school committee in June of each year shall appoint said committee.

Added by St.1975, c. 371.

§ 38P. School psychologists; tenure

Every school psychologist and supervisor of school psychologists appointed by a school committee and holding certification as a school psychologist from the department of education shall acquire tenure in the school system of the city, town or district in which he is employed, subject to

the provisions of sections forty-one, forty-two and forty-three A.
Added by St.1980, c. 520, § 1.

§ 38Q. Professional development plans; statewide assistance plan

Every school district in the commonwealth shall adopt and implement a professional development plan for all principals, teachers, other professional staff, paraprofessionals and teacher assistants employed by the district, to include the professional support teams established pursuant to section thirty-eight G, and annually shall update such plans and set forth a budget for professional development within the confines of the foundation budget. Said plan shall include training in the teaching of new curriculum frameworks and other skills required for the effective implementation of this act, including participatory decision making, and parent and community involvement. The plan shall also include training in: (1) analyzing and accommodating diverse learning styles of all students in order to achieve an objective of inclusion in the regular classroom of students with diverse learning styles; and (2) methods of collaboration among teachers, paraprofessionals and teacher assistants to accommodate such styles. The plan may also include training in the provision of pre-referral services within regular education. Said plan shall also include training for members of school councils, pursuant to section fifty-nine C. Said plan may include teacher training which addresses the effects of gender bias in the classroom. In any school district with limited English proficient students, the plan shall provide training for teachers in second language acquisition techniques for the re-certification of teachers and administrators. All professional development plans required by this section shall be filed annually with the commissioner of education.

The commissioner of education for the commonwealth shall prepare each year a plan for providing statewide assistance in the preparation and implementation of professional development plans. The plan shall include data that demonstrates, statewide and by school district, the types of professional development provided for educators who work with limited English proficient students. The commissioner shall consult with the board of higher education in developing said plan. This plan shall evaluate the feasibility of obtaining assistance from institutions of higher education and private service providers. The plan shall be submitted to the board of education for approval. A copy of said plan shall be submitted to the joint committee on education, arts, and humanities of the general court.
Added by St.1993, c. 71, § 42; St.1996, c. 151, § 221; St.2000, c. 159, §§ 145, 146; St.2002, c. 218, §§ 10, 11.

§ 38Q½. Curriculum accommodation plan

A school district shall adopt and implement a curriculum accommodation plan to assist principals in ensuring that all efforts have been made to meet students' needs in regular education. The plan shall be designed to assist the regular classroom teacher in analyzing and accommodating diverse learning styles of all children in the regular classroom and in providing appropriate services and support within the regular education program including, but not limited to, direct and systematic instruction in reading and provision of services to address the needs of children whose behavior may interfere with learning, or who do not qualify for special education services under chapter 71B. The curriculum accommodation plan shall include provisions encouraging teacher mentoring and collaboration and parental involvement.
Added by St.2000, c. 159, § 147.

§ 38R. Schools' access to criminal offender records; employees, contractors, and volunteers; use limited to protection of children

[First paragraph effective until May 4, 2012. For text effective May 4, 2012, see below.]

The school committee and superintendent of any city, town or regional school district and the principal, by whatever title the position be known, of a public or accredited private school of any city, town or regional school district shall have access to and shall obtain all available criminal offender record information from the criminal history systems board of any current or prospective employee or volunteer of the school department, who may have direct and unmonitored contact with children, including any individual who regularly provides school related transportation to children. Such school committee, superintendent or principal shall periodically, but not less than every 3 years, obtain all available criminal offender record information from the criminal history systems board on all such employees and volunteers during their term of employment or volunteer service. Said school committee, superintendent or principal

shall also have access to all criminal offender record information of any subcontractor or laborer commissioned by the school committee of any city, town or regional school district to perform work on school grounds, and who may have direct and unmonitored contact with children.

[First paragraph as amended by 2010, 256, Sec. 62 effective May 4, 2012. See 2010, 256, Sec. 145 as amended by 2010, 359, Sec. 102. For text effective until May 4, 2012, see above.]

The school committee and superintendent of any city, town or regional school district and the principal, by whatever title the position be known, of a public or accredited private school of any city, town or regional school district shall have access to and shall obtain all available criminal offender record information from the department of criminal justice information services of any current or prospective employee or volunteer of the school department, who may have direct and unmonitored contact with children, including any individual who regularly provides school related transportation to children. Such school committee, superintendent or principal shall periodically, but not less than every 3 years, obtain all available criminal offender record information from the department of criminal justice information services on all such employees and volunteers during their term of employment or volunteer service. Said school committee, superintendent or principal shall also have access to all criminal offender record information of any subcontractor or laborer commissioned by the school committee of any city, town or regional school district to perform work on school grounds, and who may have direct and unmonitored contact with children.

Access to such information shall be obtained in accordance with sections 167 to 168, inclusive, of chapter 6. A school committee, superintendent or principal obtaining information under this section shall prohibit the dissemination of such information for any purpose other than to further the protection of school children.

Added by St.1996, c. 483. Amended by St.2002, c. 385, § 2; St.2010, c. 256, § 62, eff. May 4, 2012.

§ 39. Teacher's application forms; questions concerning religion or politics

No public school committee or official shall inquire concerning, or require or solicit from an applicant for a position in the public schools any information as to, his religious belief, creed or practice, or his political opinions or affiliations; and no appointment to such a position shall be in any manner affected thereby. Violation of this section shall be punished by a fine of not more than fifty dollars.

Historical and Statutory Notes

St.1917, c. 84.

§ 40. Compensation of teachers; deferred payment

The compensation of each teacher, except a person in training and except a person employed as a temporary substitute, upon a majority vote of the respective school committee and the appropriating authority or, in the case of a regional school district, upon acceptance as provided hereafter, shall be at a rate of not less than eighteen thousand dollars or at a rate not less than twenty thousand dollars, as designated by said vote, for the school year commencing after July first, nineteen hundred and eighty-seven. In the case of a regional school district, acceptance shall require the approval of the regional school district committee and two-thirds of the appropriating authorities of the municipalities in such regional school district. The compensation paid to such teachers shall be deemed to be fully earned at the end of the school year, and proportionately earned during the school year. Payment of such compensation may be deferred to the extent that equal payments may be established for a twelve month period including amounts payable in July and August subsequent to the end of the school year. Educational collaboratives, formed under the provisions of section four E of chapter forty, may accept the provisions of this section by a majority vote of the collaborative board and the approval by a vote of the majority of the appropriating authorities of the member cities and towns.

Any city, town, regional school district, educational collaborative or independent vocational school district which currently employs teachers at salaries below eighteen thousand dollars or below twenty thousand dollars and which accepts the minimum salary provisions of this section for school years commencing after July first, nineteen hundred and eighty-seven shall receive a minimum teacher salary grant from the commonwealth in fiscal years nineteen hundred and eighty-eight and nineteen hundred and eighty-nine equal to the cost incurred by such city, town, collaborative or regional school district during said fiscal years as a result of increasing the minimum teacher salary to

eighteen thousand dollars or to twenty thousand dollars, as designated by the vote of the school committee and the appropriating authority thereof, for each teacher whose salary was below that level prior to July first, nineteen hundred and eighty-seven and for each teacher hired after June thirtieth, nineteen hundred and eighty-seven whose salary was below that level at any time between July first, nineteen hundred and eighty-seven and June thirtieth, nineteen hundred and eighty-nine.

Amended by St.1941, c. 507; St.1943, c. 494; St.1945, c. 727, § 1; St.1946, c. 527, § 1; St.1949, c. 684; St.1951, c. 499; St.1952, c. 69; St.1956, c. 434; St.1957, c. 447; St.1958, c. 545; St.1959, c. 602, § 1; St.1962, c. 519; St.1962, c. 594, § 1; St.1964, c. 267, § 1; St.1967, c. 272, § 1; St.1967, c. 278; St.1973, c. 52, § 15; St.1979, c. 717, § 4; St.1985, c. 188, § 16; St.1986, c. 355, § 2; St.1987, c. 727, §§ 10, 11; St.1988 c. 7, § 3; St.1991, c. 138, § 230; St.1991, c. 223, § 3.

Historical and Statutory Notes

St.1918, c. 197.
St.1921, c. 420, § 4.

§ 41. Tenure of teachers and superintendents; persons entitled to professional teacher status; dismissal; review

For the purposes of this section, a teacher, school librarian, school adjustment counselor, school nurse, school social worker or school psychologist who has served in the public schools of a school district for the three previous consecutive school years shall be considered a teacher, and shall be entitled to professional teacher status as provided in section forty-two. The superintendent of said district, upon the recommendation of the principal, may award such status to any teacher who has served in the principal's school for not less than one year or to a teacher who has obtained such status in any other public school district in the commonwealth. A teacher without professional teacher status shall be notified in writing on or before June fifteenth whenever such person is not to be employed for the following school year. Unless such notice is given as herein provided, a teacher without such status shall be deemed to be appointed for the following school year.

School principals, by whatever title their position may be known, shall not be represented in collective bargaining, but each principal, upon the written request of the principal, shall meet and discuss the terms and conditions of the principal's employment in the principal's school district with the district's superintendent or the superintendent's designee, at a time to be determined by the superintendent and may be represented by an attorney or other representative. School principals shall enter into individual employment contracts with their employing districts concerning the terms and conditions of employment. The initial contract with each individual school district shall be for not less than 1 year nor more than 3 years. The second and subsequent contracts shall be for not less than 3 nor more than 5 years unless: (i) said contract is a 1 year contract based on the failure of the superintendent to notify the principal of the proposed nonrenewal of his contract pursuant to this section; or (ii) both parties agree to a shorter term of employment. Notwithstanding the past employment conditions of a school principal, the conditions established by this paragraph shall apply to the initial contract of each school principal. Failure of the superintendent to notify a principal of the proposed nonrenewal of his contract at least sixty days prior to the expiration date of such contract shall automatically renew the contract for an additional one year period.

Except as provided herein, section forty-two shall not apply to school principals, assistant principals or department heads, although nothing in this section shall deny to any principal, assistant principal or department head any professional teacher status to which he shall otherwise be entitled. A principal, assistant principal, department head or other supervisor who has served in that position in the public schools of the district for three consecutive years shall not be dismissed or demoted except for good cause. Only a superintendent may dismiss a principal. A principal, assistant principal, department head or other supervisor shall not be dismissed unless he has been furnished with a written notice of intent to dismiss with an explanation of the grounds for the dismissal, and, if he so requests, has been given a reasonable opportunity within fifteen days after receiving such notice to review the decision with the superintendent at which meeting such employee may be represented by an attorney or other representative to present information pertaining to the bases for the decision and to such employee's status. A principal, assistant principal, department head or other supervisor may seek review of a dismissal or demotion decision by filing a petition with the commissioner for arbitration. Except as provided herein, the procedures for arbitration, and the time allowed for the arbitrator to issue a decision, shall be the same as that in section forty-two. The commissioner shall provide the parties with the names of three arbitra-

tors who are members of the American Arbitration Association. The arbitrators shall be different from those developed pursuant to section forty-two. The parties each shall have the right to strike one of the three arbitrator's names if they are unable to agree upon a single arbitrator from amongst the three.

A school committee may award a contract to a superintendent of schools or a school business administrator for periods not exceeding six years which may provide for the salary, fringe benefits, and other conditions of employment, including but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performance of duties or office, liability insurance, and leave for said superintendent or school business administrator. Nothing in this section shall be construed to prevent a school committee from voting to employ a superintendent of schools who has completed three or more years' service to serve at its discretion.

Amended by St.1947, c. 597, § 1; St.1950, c. 283; St.1953, c. 372; St.1956, c. 132, § 1; St.1972, c. 464, § 1; St.1973, c. 847, § 6; St.1988, c. 153, § 2; St.1990, c. 404, § 2; St.1993, c. 71, § 43; St.1994, c. 346; St.1995, c. 209, § 3; St.1996, c. 99; St.1996, c. 450, § 127; St.2006, c. 267, eff. Oct. 22, 2006; St.2008, c. 314, § 1, eff. Nov. 12, 2008; St.2010, c. 399, eff. Mar. 18, 2011.

Historical and Statutory Notes

St.1886, c. 313.
R.L.1902, c. 42, § 32.
St.1914, c. 714, §§ 1, 7, 8.
St.1918, c. 257, § 182.
St.1919, c. 5.
St.1920, c. 2.

§ 41A. Leaves of absence of professional staff

The school superintendent may grant a leave of absence for study or research to any teacher, registered nurse, principal, supervisor, director, school librarian, school business administrator, or assistant superintendent, serving at discretion which would increase his professional ability, such leave to be for a period not exceeding one year at full or partial pay; provided, however, that prior to the granting of such leave he shall enter into a written agreement with the superintendent that upon termination of such leave he will return to service in the public schools of such city or town for a period equal to twice the length of such leave and that, in default of completing such service, he will refund to the city or town an amount equal to such proportion of salary received by him while on leave as the amount of service not actually rendered as agreed bears to the whole amount of service agreed to be rendered. A school superintendent may also grant a leave of absence to any teacher, registered nurse, principal, supervisor, or school business administrator, serving at discretion for service to a statewide professional education organization of which such teacher, registered nurse, principal, supervisor, or school business administrator is a member and has been elected to hold the office of president therein, such leave to be for a period not exceeding four full years at full or partial pay; provided, however, that such professional education organization shall reimburse the school committee for any salary paid to said teacher, registered nurse, principal, supervisor, or school business administrator during such period. Any employee granted a leave of absence under this section may receive compensation from any grants or gifts received for the purpose of this section pursuant to section thirty-seven A, as well as from funds appropriated therefore.

Any teacher, registered nurse, principal, supervisor, director, school librarian, school business administrator or assistant principal who is elected or appointed to a state office, or elected by the people to the office of mayor, shall upon his written request made to the school superintendent, be granted a leave of absence without pay for such position for all or such portion of the term for which he was elected or appointed as he may from time to time designate, and shall not as a result of such election or appointment, be suspended or discharged or suffer any loss of rights. Any person granted a leave of absence under the provisions of this paragraph shall not be subject to the provisions of section thirty-eight G during the period of such leave.

A school committee may grant a leave of absence for study or research, or for service to a statewide professional education organization, and shall grant a leave of absence for service as an elected state official or elected mayor, to a school superintendent under the same terms and conditions as are described above for leaves granted to other professional staff.

Added by St.1962, c. 277. Amended by St.1967, c. 860, § 1; St.1968, c. 136; St.1971, c. 323; St.1975, c. 349; St.1979, c. 361; St.1985, c. 493; St.1985, c. 504; St.1988, c. 153, § 3; St.1991, c. 54; St.1993, c. 362; St.1994, c. 60, § 94; St.1995, c. 38, § 101.

§ 41B. Leaves of absence; Peace Corps

A school superintendent shall grant to a teacher who has been accepted to serve in the Peace Corps

of the United States and who is currently in good standing in a public school of the commonwealth a leave of absence for the term of such service. Such leave shall be without pay and shall not be counted as creditable service for retirement purposes but such member shall be restored to his previous or a similar position, with the same status, pay, length of service credit and seniority, whenever applicable, as he held on the date of such leave of absence.

Added by St.1993, c. 362.

§ 42. Dismissal or demotion of teachers or other employees of school or school district; arbitration

A principal may dismiss or demote any teacher or other person assigned full-time to the school, subject to the review and approval of the superintendent; and subject to the provisions of this section, the superintendent may dismiss any employee of the school district. In the case of an employee whose duties require him to be assigned to more than one school, and in the case of teachers who teach in more than one school, those persons shall be considered to be under the supervision of the superintendent for all decisions relating to dismissal or demotion for cause.

A teacher who has been teaching in a school system for at least ninety calendar days shall not be dismissed unless he has been furnished with written notice of intent to dismiss and with an explanation of the grounds for the dismissal in sufficient detail to permit the teacher to respond and documents relating to the grounds for dismissal, and, if he so requests, has been given a reasonable opportunity within ten school days after receiving such written notice to review the decision with the principal or superintendent, as the case may be, and to present information pertaining to the basis for the decision and to the teacher's status. The teacher receiving such notice may be represented by an attorney or other representative at such a meeting with the principal or superintendent. Teachers without professional teacher status shall otherwise be deemed employees at will.

A teacher with professional teacher status, pursuant to section forty-one, shall not be dismissed except for inefficiency, incompetency, incapacity, conduct unbecoming a teacher, insubordination or failure on the part of the teacher to satisfy teacher performance standards developed pursuant to section thirty-eight of this chapter or other just cause.

A teacher with professional teacher status may seek review of a dismissal decision within thirty days after receiving notice of his dismissal by filing a petition for arbitration with the commissioner. The commissioner shall forward to the parties a list of three arbitrators provided by the American Arbitration Association. Each person on the list shall be accredited by the National Academy of Arbitrators. The parties each shall have the right to strike one of the three arbitrators' names if they are unable to agree upon a single arbitrator from amongst the three. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association to be consistent with the provisions of this section. The parties each shall have the right to strike one of the three arbitrators' names if they are unable to agree upon a single arbitrator from amongst the three. The board of education shall determine the process for selecting arbitrators for the pool. The fee for the arbitration shall be split equally between the two parties involved in the arbitration.

At the arbitral hearing, the teacher and the school district may be represented by an attorney or other representative, present evidence, and call witnesses and the school district shall have the burden of proof. In determining whether the district has proven grounds for dismissal consistent with this section, the arbitrator shall consider the best interests of the pupils in the district and the need for elevation of performance standards.

The arbitrator's decision shall be issued within one month from the completion of the arbitral hearing, unless all parties involved agree otherwise, and shall contain a detailed statement of the reasons for the decision. Upon a finding that the dismissal was improper under the standards set forth in this section, the arbitrator may award back pay, benefits, reinstatement, and any other appropriate non-financial relief or any combination thereof. Under no circumstances shall the arbitrator award punitive, consequential, or nominal damages, or compensatory damages other than back pay, benefits or reinstatement. In the event the teacher is reinstated, the period between the dismissal and reinstatement shall be considered to be time served for purposes of employment. The arbitral decision shall be subject to judicial review as provided in chapter one hundred and fifty C. With the exception of other remedies provided by statute, the remedies provided hereunder shall be the exclusive remedies available to teachers for wrongful termination. The rules governing this arbitra-

tion procedure shall be the rules of the American Arbitration Association as pertains to arbitration.

Neither this section nor section forty-one shall affect the right of a superintendent to lay off teachers pursuant to reductions in force or reorganization resulting from declining enrollment or other budgetary reasons. No teacher with professional teacher status shall be laid off pursuant to a reduction in force or reorganization if there is a teacher without such status for whose position the covered employee is currently certified. No teacher with such status shall be displaced by a more senior teacher with such status in accordance with the terms of a collective bargaining agreement or otherwise unless the more senior teacher is currently qualified pursuant to section thirty-eight G for the junior teacher's position.

Amended by St.1934, c. 123; St.1946, c. 195; St.1947, c. 597, § 2; St.1953, c. 244; St.1956, c. 132, § 2; St.1966, c. 185, §§ 1, 2; St.1970, c. 388, § 1; St.1972, c. 464, § 2; St.1985, c. 188, § 18; St.1988, c. 153, §§ 4 to 6; St.1993, c. 71, § 44.

Historical and Statutory Notes

St.1844, c. 32.
G.S.1860, c. 38, § 25.
P.S.1882, c. 44, § 30.
R.L.1902, c. 42, § 31.
St.1914, c. 714, §§ 2, 4, 5, 7, 8.
St.1921, c. 293.

§ 42A. Repealed, 1993, 71, Sec. 45

§ 42B. Rights of school employees in regional districts

The provisions of this chapter relating to school personnel granted certificates in accordance with section thirty-eight G shall apply to all such school personnel employed by regional school districts. Any such school personnel who have professional teacher status or other rights under section forty-one in a particular school district, whose positions are superseded by reasons of the establishment and operation of a regional school district, shall be employed with the same status by the regional school district.

All such school personnel employed by regional school districts shall initially be placed on the salary schedule of the district so that compensation to be paid to such school personnel shall not be less than the compensation received by such school personnel while previously employed with the same status.

Such school personnel shall also be given credit by the regional school district committee for all accumulated sick leave and accumulated sabbatical leave years of service while employed with such status and for terminal compensation due such school personnel on the termination of such service.

All such personnel without such status in a city or town in the district whose positions are superseded by reason of the establishment and operation of a regional school district shall be elected to serve in such district by the regional school district committee; provided, however, that there is an available position which such person is certified to fill. All such personnel employed by regional school district committees shall initially be placed on the salary schedule of the regional school district so that the compensation paid to such school personnel shall not be less than the compensation received by such school personnel while previously employed by a local school committee. Such school personnel shall also be given credit by the regional school district committee for all accumulated sick leave, accumulated time towards service with such status, and accumulated sabbatical leave years of service, and for terminal compensation due such school personnel on the termination of such service.

Any employee subject to the provisions of chapter thirty-one, employed by the school committee of a town, whose position is superseded by reason of the establishment and operation of a regional school district shall be employed by the regional school district without loss of any civil service or other rights previously acquired by him.

This section shall also apply to all school personnel with such status of local trustees for vocational education, and any such school personnel whose positions are superseded by reason of the establishment and operation of a regional school district shall be employed by the regional school district with the same status.

Any such school personnel, employed by a regional school district, whose position is abolished or eliminated by reason of the disestablishment and discontinuance of the regional school district or the withdrawal of a member community from such district shall be employed by one of the withdrawing city or town school committees, and if any such personnel have such status, such personnel shall be employed by such city or town, school committee with the same status. In the event that there are not sufficient teaching positions available in the withdrawing city or town school systems, such

personnel shall be offered the available positions for which they are currently certified in the order of their seniority in the regional school district. All such personnel so employed by a city or town school district shall initially be placed on the salary schedule of such city or town school district so that the compensation paid to such school personnel shall not be less than the compensation received by such school personnel while previously employed by the regional school district. Such school personnel also shall be given credit by the city or town school committee for all accumulated sick time, accumulated time towards service with such status, and accumulated sabbatical leave years of service, and for terminal compensation due such school personnel on the termination of such service.

Added by St.1952, c. 545. Amended by St.1956, c. 136, § 1; St.1969, c. 653; St.1970, c. 389; St.1970, c. 491; St.1971, c. 307; St.1976, c. 351; St.1984, c. 129; St.1993, c. 71, § 46.

§ 42C. Records of teachers; inspection

School officials of cities and towns keeping records concerning any teacher or his work shall, at the written request of the teacher, permit the teacher by appointment to inspect the contents of his personnel folder, files, cards and records, and to make copies of such contents and records as concern his work or himself.

Added by St.1957, c. 195.

§ 42D. Suspension of district employees

The superintendent may suspend any employee of the school district subject to the provisions of this section. The principal of a school may suspend any teacher or other employee assigned to the school subject to the provisions of this section. Any employee shall have seven days written notice of the intent to suspend and the grounds upon which the suspension is to be imposed; provided, however, that the superintendent may, for good cause, require the immediate suspension of any employee, in which case the employee shall receive written notice of the immediate suspension and the cause therefor at the time the suspension is imposed. The employee shall be entitled (i) to review the decision to suspend with the superintendent or principal if said decision to suspend was made by the principal; (ii) to be represented by counsel in such meetings; (iii) to provide information pertinent to the decision and to the employee's status.

No teacher or other employee shall be suspended for a period exceeding one month, except with the consent of the teacher or other employee, and no teacher or other employee shall receive compensation for any period of lawful suspension.

No teacher shall be interrogated prior to any notice given to him relative to the suspension unless the teacher or other employee is notified of his right to be represented by counsel during any such investigation. A suspended teacher or other employee may seek review of the suspension by following the arbitration procedures set forth in section forty-two. Nothing in this section shall be construed as limiting any provision of a collective bargaining agreement with respect to suspension of teachers or other employees.

Added by St.1966, c. 185, § 3. Amended by St.1968, c. 156; St.1972, c. 464, § 3; St.1975, c. 316; St.1988, c. 153, § 7; St.1993, c. 71, § 47.

§ 43. Reduction of salaries; conditions

The salary of no teacher employed with professional teacher status in any city or town except Boston shall be reduced without his consent except by a general salary revision affecting equally all teachers of the same salary grade in the town or except in connection with a reduction in status from full-time to part-time pursuant to a reduction in force resulting from declining enrollments or other budgetary reasons or pursuant to reorganizations for academic or budgetary reasons. Nothing in this section or in any other section of this chapter shall be construed to prevent a school district from entering into an individual annuity contract for such employee or from reducing the salary or compensation of such employee pursuant to such agreement for the purpose of such purchase as authorized by section thirty-seven B.

Amended by St.1963, c. 466, § 4; St.1972, c. 464, § 4; St.1988, c. 153, § 8; St.1993, c. 71, § 48.

Historical and Statutory Notes

St.1914, c. 714, §§ 3, 8.

§§ 43A, 43B. Repealed, 1993, 71, Sec. 49

§ 44. Restrictions on teachers' political rights; prohibition

No committee shall by rule, regulation, or otherwise, restrict any teacher in, or dismiss him for, exercising his right of suffrage, signing nomination papers, petitioning the general court or appearing before its committees, to the extent that such rights, except voting, are not exercised on the school premises during school hours, or when their

exercise would actually interfere with the performance of school duties.

Historical and Statutory Notes

St.1913, c. 628.

§ 45. Procurement of teaching positions; regulation of fees; penalty for violation

No person shall demand or accept from any applicant for the position of teacher in the public schools a fee or other compensation exceeding two dollars, and no additional sum shall be charged to cover expenses or for any other reason, except that further compensation, not exceeding five per cent of the teacher's salary for the first year, provided the position is open to the teacher for said period, may be charged for procuring such position. Violation of this section shall be punished by a fine of not less than fifty nor more than five hundred dollars.

Historical and Statutory Notes

St.1911, c. 731, §§ 2, 4.

§§ 46 to 46B. Repealed, 1972, 766, Sec. 10

§ 46C. Repealed, 1968, 352, Sec. 2

§§ 46D to 46F. Repealed, 1972, 766, Sec. 10

§ 46G. Repealed, 1995, 209, Sec. 4

§§ 46H to 46M. Repealed, 1972, 766, Sec. 10

§ 47. Athletic programs; school organizations; student activity accounts

The committee may supervise and control all athletic and other organizations composed of public school pupils and bearing the school name or organized in connection therewith. It may directly or through an authorized representative determine under what conditions the same may compete with similar organizations in other schools. Expenditures by the committee for the organization and conduct of physical education, athletics, sports, games and play, for providing proper apparatus, equipment, supplies, athletic wearing apparel, including appropriate souvenir garments and trophies, and facilities for the same in the buildings, yards and playgrounds under the control of the committee, or upon any other land which it may have the right or privilege to use for this purpose, and for the employment of experienced athletic directors to supervise said physical education, athletics, sports, games and play, shall be deemed to be for a school purpose. Expenditures by the committee for making special awards to pupils who have performed meritoriously in the fields of art, debating, distributive education, music, science, social studies or languages shall also be deemed to be for a school purpose. Cities and towns may appropriate for the employment of coaches to supervise in public schools physical education, athletics, sports, games and play, and for the transportation and expenses of public school athletic teams, coaches, cheerleaders, bands and any other groups composed of public school pupils which bear the school name and are under the control of the school committee, within and without the commonwealth, to places where athletic contests or physical education, sports, games, play, musical festivals, competition or other events are held, and for the purchase of band and cheerleaders' uniforms and musical instruments for the members of bands composed of public school pupils and bearing the school name and under the control of the school committee. All receipts by the committee in connection with the conduct of activities provided for under this section or any other activity not expressly provided for in this chapter but sponsored by the school committee in which participation is contingent upon the payment of a fee by the participant, shall be deposited with the treasurer of such town or, in cases where the town is a member of a regional school district, with the treasurer of such district and held as a separate account and expended by said school committee without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four. No moneys may be expended from an appropriation or from the separate fund authorized by this section except upon the approval of the school committee, or of the selectmen in towns and of mayors in cities, for travel to other states.

Notwithstanding the provisions of the preceding paragraph or section fifty-three of chapter forty-four, the school committee of a city, town or district may authorize a school principal to receive money in connection with the conduct of certain student activities and to deposit such money, with the municipal or regional school district treasurer, into an interest bearing bank account, hereinafter referred to as the Student Activity Agency Account, duly established by vote of the school committee to be used for the express purpose of conducting student activities. Interest earned by such Student

Activity Agency Account shall be retained by the fund and the school committee shall determine for what purpose such earnings may be used. In addition to such Student Activity Agency Account, the school committee may authorize the municipal or regional school district treasurer to establish a checking account, hereinafter referred to as the Student Activity Checking Account, to be operated and controlled by a school principal and from which funds may be expended exclusively for student activity purposes for the student activities authorized by the school committee. Such account shall be used for expenditures only and funds received for student activities may not be deposited directly into such account.

The school committee shall vote to set the maximum balance that may be on deposit in such Student Activity Checking Account. The principal designated to operate and control such Student Activity Checking Account shall give bond to the municipality or district in such amount as the treasurer shall determine to secure the principal's faithful performance of his duties in connection with such account. To the extent that the funds are available in such Student Activity Agency Account, funds up to the maximum balance set by the school committee shall be transferred from the Student Activity Agency Account through the warrant process to initially fund such Student Activity Checking Account.

Periodically, to the extent that funds are available in such Student Activity Agency Account, the municipal or regional school district treasurer shall reimburse such Student Activity Checking Account, through the warrant process, to restore the limit set by the school committee. The principal shall adhere to such administrative procedures as the municipal or regional school district treasurer or accountant may prescribe. There shall be an annual audit of the student activity funds which shall be conducted in accordance with procedures as agreed upon between the school committee and the auditor based upon guidelines issued by the department of education.

Amended by St.1935, c. 199; St.1950, c. 658; St.1951, c. 411, § 1; St.1952, c. 316, § 1; St.1954, c. 271; St.1959, c. 113; St.1962, c. 301, §§ 3, 4; St.1969, c. 66; St.1969, c. 678; St.1970, c. 721; St.1982, c. 173; St.1996, c. 66.

Historical and Statutory Notes

St.1906, c. 251.
St.1911, c. 314.
St.1919, c. 292, § 4.

§ 47A. Athletic coaches; employment

The superintendent may contract to employ athletic coaches hired under the provisions of section fifty-nine B for periods not in excess of three years. The provisions of section forty-one relative to tenure shall not apply to such athletic coaches, unless they are otherwise entitled to tenure.

Added by St.1954, c. 220. Amended by St.1993, c. 71, § 50; St.1996, c. 134, § 1.

§ 48. Textbooks and school supplies

The principal at each school, subject to the direction of the superintendent, shall, at the expense of the school district, purchase textbooks and other school supplies, and consistent with the district policy, shall loan them to the pupils attending such school free of charge. If instruction is given in the manual and domestic arts, the principal may so purchase and loan the necessary tools, implements and materials. The principal shall also, at like expense, procure such apparatus, reference books and other means of illustration, as may be needed. Said purchases shall be made in accordance with chapter thirty B and within the purchasing guidelines adopted by the municipality where such purchases are made if such guidelines exist.

Amended by St.1973, c. 1196; St.1975, c. 652; St.1993, c. 71, § 51.

Historical and Statutory Notes

St.1826, c. 143, § 7.
St.1855, c. 436.
St.1873, c. 106.
St.1878, c. 23.
P.S.1882, c. 44, § 40.
St.1884, c. 103.
St.1885, c. 161, § 2.
St.1894, c. 320, § 2.
R.L.1902, c. 42, §§ 35, 37.

§ 48A. School safety patrols; functions, limitations; liability

School committees shall have authority to organize school safety patrols, consisting of pupils, whose functions shall be to encourage pupils to cross highways at designated crossings and when conditions are safe, to assist drivers of school buses in maintaining safety rules and to protect pupils who are boarding or alighting from such buses; and may adopt regulations relative to the flagging or signalling of school buses by members of said safety patrols. Said committees may make expenditures, from funds appropriated for school purposes, for the purchase of traffic belts, so called, to be used by the safety patrol leaders in safeguarding the passage of pupils to and from school. Nothing

herein contained shall authorize a safety patrol member to direct vehicular traffic, provided, however, that such patrol member may use a flag or other approved signal to indicate to a driver that school children are crossing or are about to cross the street. No patrol member shall be stationed in that portion of the highway intended for the use of vehicular traffic, but shall perform his duties from the curb and sidewalk areas.

No liability shall attach either to the school committees or any individual member thereof, a superintendent, teacher, patrol member, or parent of a patrol member, or other school authority by virtue of the organization, maintenance or operation of a safety patrol under authority of this section.

Amended by St.1935, c. 47; St.1958, c. 164.

Historical and Statutory Notes

St.1930, c. 314.

§ 48B. Uniforms of school employees

The school committee may make expenditures for the purchase and care of uniforms to be worn by employees whose duties require the preparation, handling and serving of food in connection with the sale of school lunches, or involve the care, maintenance, repair or heating of school buildings.

Added by St.1964, c. 32.

§ 49. Purchase of textbooks by pupils

Pupils in the public schools may, if the committee so votes, purchase from the town, under such regulations as the committee may prescribe, any textbooks which are to be, or have been, used by them in such schools.

Historical and Statutory Notes

St.1901, c. 472.
R.L.1902, c. 42, § 36.
St.1919, c. 292, § 8.

§ 49A. Orders for materials and equipment; contracts for services

At any time after the annual appropriations for the ensuing fiscal year are made by a city or town or by all the member cities and towns of a regional school district, a school committee may order materials, supplies and equipment and may contract for services for the public schools which are chargeable against such appropriations, provided that no payment therefor shall be made prior to the commencement of said ensuing fiscal year.

Added by St.1978, c. 124.

§ 50. Change of school books

A change may be made in the school books used in the public schools by a vote of two thirds of the whole school committee at a meeting thereof, notice of such intended change having been given at a previous meeting.

Historical and Statutory Notes

St.1859, c. 93, § 2.
G.S.1860, c. 38, § 28.
St.1863, c. 126.
St.1867, c. 155.
St.1876, c. 47, § 2.
P.S.1882, c. 44, § 34.
R.L.1902, c. 42, § 38.

§ 51. Exhibition of school work at expositions

The school committee may, at any national, state, or foreign exposition, make an exhibition showing the character, standing, or work of its public schools.

Historical and Statutory Notes

St.1904, c. 172.

§ 52. Compensation of school committee members

The school committee shall serve without compensation, except that a member of a school committee of a city, town, regional school district or superintendency union may be compensated for his services by a majority vote of the city council in a city having a Plan D or Plan E charter; in a city not having a Plan D or Plan E charter by vote of the city council, subject to the provisions of the charter of such a city; in a town by a majority vote at a town meeting; and in a regional school district or school superintendency by a majority vote of the voting member towns authorized at their respective town meetings, the amount of such compensation, in each case, to be set by the respective cities, towns or groups of towns. No member of a school committee in any town shall be eligible to the position of teacher, or superintendent of public schools therein, or in any union school or superintendency union or district in which his town participates.

Amended by St.1932, c. 90; St.1982, c. 296.

Historical and Statutory Notes

St.1838, c. 105, § 4.
St.1854, c. 314.
St.1856, c. 232.
G.S.1860, c. 38, §§ 34, 35.
St.1873, c. 157.
P.S.1882, c. 44, §§ 42, 43.
St.1888, c. 431, § 5.
St.1898, c. 466, § 5.

R.L.1902, c. 42, § 39.
St.1904, c. 173.

§ 53. School physicians and nurses

The school committee shall appoint one or more school physicians and registered nurses, shall assign them to the public schools within its jurisdiction, shall provide them with all proper facilities for the performance of their duties and shall assign one or more physicians to the examination of children who apply for health certificates required by section eighty-seven of chapter one hundred and forty-nine, but in cities where the medical inspection hereinafter prescribed is substantially provided by the board of health, said board shall appoint and assign the school physicians and registered nurses. The department may exempt towns having a valuation of less than one million dollars from so much of this section as relates to school nurses.

Amended by St.1974, c. 411, § 1.

Historical and Statutory Notes

St.1906, c. 502, § 1.
St.1910, c. 257, § 1.
St.1921, c. 357, § 1.

§ 53A. Employment of medical personnel by superintendency district or union; compensation; removal

A superintendency district formed and conducted under the provisions of section sixty, or a superintendency union formed and conducted under the provisions of sections sixty-one to sixty-four, inclusive, may employ one or more school physicians and may employ one or more school registered nurses; determine the relative amount of service to be rendered by each in each town; fix the compensation of each person so employed; apportion the payment thereof among the several towns; and certify the respective shares to the several town treasurers. A school physician or registered nurse so employed may be removed by a two thirds vote of the full membership of the joint committee. The joint committee of any superintendency union may employ clerical and secretarial help, special teachers and supervisors, fix the compensation of each person so employed and apportion the payment thereof among the several towns; and certify the respective shares to the respective town treasurers.

Amended by St.1950, c. 208, § 1; St.1974, c. 411, §§ 2, 2A.

Historical and Statutory Notes

St.1921, c. 357, § 2.

§ 53B. Towns within a superintendency district or union; exemption from appointment requirement

The towns comprised in a superintendency district or union employing, to the satisfaction of the department, one or more school physicians and registered nurses in accordance with the provisions of section fifty-three A shall be exempt from the provisions of section fifty-three requiring the appointment of such persons.

Amended by St.1974, c. 411, § 3.

Historical and Statutory Notes

St.1921, c. 357, § 2.

§ 54. Examination of children and school personnel

Every school physician shall make a prompt examination of all children referred to him as provided in this chapter, and such further examination of teachers, janitors and school buildings as in his opinion the protection of the health of the pupils may require. Every such physician who is assigned to perform the duty of examining children who apply for health certificates shall make a prompt examination of every child who wishes to obtain an employment permit, as provided in section eighty-seven of chapter one hundred and forty-nine, and who presents to said physician the pledge or promise of the employer, as provided in said section; and the physician shall certify in writing whether or not in his opinion such child is in sufficiently sound health and physically able to perform the work described in said pledge or promise.

Amended by St.1938, c. 265, § 1; St.1945, c. 133, § 2.

Historical and Statutory Notes

St.1906, c. 502, § 2.
St.1910, c. 257, § 2.

§ 54A. Physician or person trained in emergency medical care; assignment to interscholastic football games

A physician employed by a school committee or a person who has completed a full course in emergency medical care as provided in section six of chapter one hundred and eleven C shall be assigned to every interscholastic football game played by any team representing a public secondary school in the commonwealth, and the expenses of such physician or person shall be paid by the

school committee of the city, town or district wherein such football game is played.
Added by St.1972, c. 74. Amended by St.1975, c. 569.

§ 54B. Administration of medications in school settings; regulations

Notwithstanding any general or special law to the contrary, the department of public health shall promulgate regulations governing the administration of medications, including psychotropic medications to children in school settings, in accordance with sections seven and nine of chapter ninety-four C. In developing such regulations, the department shall consult with the board of registration in nursing and the board of registration in medicine.

Notwithstanding any general or special law or regulation to the contrary, no school district shall prohibit students with asthma or other respiratory diseases from possessing and administering prescription inhalers in accordance with department of public health regulations concerning students' self-administration of prescription medications.

Notwithstanding any general or special law or regulation to the contrary, no school district shall prohibit students with cystic fibrosis from possessing and administering prescription enzyme supplements in accordance with department of public health regulations concerning students' self-administration of prescription medications.

Notwithstanding any general or special law or regulation to the contrary, a school district shall not prohibit a student with diabetes from possessing and administering a glucose monitoring test and insulin delivery system, in accordance with department of public health regulations concerning a student's self-administration of a prescription medication.
Added by St.1973, c. 817. Amended by St.1991, c. 138, § 135; St.1992, c. 133, § 433; St.2002, c. 258; St.2004, c. 351, eff. Sept. 17, 2004; St.2004, c. 456, eff. Mar. 30, 2005.

§ 55. Contagious diseases; regulations

A child infected, or in a household where a person is infected, with a disease dangerous to the public health as defined in accordance with section six of chapter one hundred and eleven, or in a household exposed to contagion from any such disease in another household, shall not attend any public school while he is so infected or remains in a household where such infection or exposure exists if the regulations of the board of health require such exclusion. A child returning to school after having been absent on account of such infection or exposure shall present a certificate from the board of health or its duly appointed agent that the danger of conveying such disease by such child has passed; provided, that if such a child returns to school without such a certificate, after having been absent on account of such infection or exposure, he shall immediately be referred to a school physician for examination and, if it is found by such physician upon such examination that such danger has passed, he may remain at school.
Amended by St.1938, c. 265, § 2; St.1952, c. 89.

Historical and Statutory Notes

St.1906, c. 502, § 3.
St.1922, c. 120.

§ 55A. Sick, injured or incapacitated pupils; procedure for handling; emergency first aid or transportation; exemption from civil liability

A child showing signs of ill health or of being infected with a disease dangerous to the public health as defined in accordance with section six of chapter one hundred and eleven shall be sent home immediately, or as soon as safe and proper conveyance can be found, or shall be referred to a school physician, who may direct that such child be sent home. In the case of schools remotely situated, such other steps may be taken as will best effectuate the purpose of this section and ensure the safety of such child and other pupils. The superintendent of schools or collaborative director of a collaborative as set forth in section four E of chapter forty, shall immediately cause the board of health to be notified of all children excluded under this section by reason of any disease dangerous to the public health.

No public school teacher and no collaborative school teacher, no principal, secretary to the principal, nurse or other public school or collaborative school employee who, in good faith, renders emergency first aid or transportation to a student who has become injured or incapacitated in a public school or collaborative school building or on the grounds thereof shall be liable in a suit for damages as a result of his acts or omissions either for such first aid or as a result of providing such emergency transportation to a place of safety, nor shall such person be liable to a hospital for its expenses if under such emergency conditions he causes the admission of such injured or incapaci-

tated student, nor shall such person be subject to any disciplinary action by the school committee, or collaborative board of such collaborative for such emergency first aid or transportation.

Added by St.1938, c. 265, § 3. Amended by St.1973, c. 660; St.1983, c. 114; St.1984, c. 328; St.1985, c. 111.

§ 55B. Repealed, 2003, 46, Sec. 81

§ 55C. Eye protective devices

Each teacher and pupil of any school, public or private, shall, while attending school classes in industrial art or vocational shops or laboratories in which caustic or explosive chemicals, hot liquids or solids, hot molten metals, or explosives are used or in which welding of any type, repair or servicing of vehicles, heat treatment or tempering of metals, or the milling, sawing, stamping or cutting of solid materials, or any similar dangerous process is taught, exposure to which may be a source of danger to the eyes, wear an industrial quality eye protective device, approved by the department of public health. Each visitor to any such classroom or laboratory shall also be required to wear such protective device.

Added by St.1964, c. 51. Amended by St.1966, c. 21; St.1996, c. 151, § 222.

§ 56. Sick children; notification of parents

If any child is found to be suffering from any disease or defect, or if any child is found to have any defect or disability requiring treatment, the school committee shall forthwith notify the parent or guardian of such child.

Amended by St.1938, c. 265, § 4.

Historical and Statutory Notes

St.1906, c. 502, §§ 4, 5.

§ 57. Physical examination of pupils; eye examination, written report

The committee, or the board of health in those municipalities where school health services are the responsibility of the board of health, shall cause every child in the public schools, and at the individual request of a parent or guardian of a pupil in a private school which has been approved under section one of chapter seventy-six, and which does not discriminate in its entrance requirements on the basis of race or color cause such pupil to be separately and carefully examined in such manner and at such intervals, including original entry, as may be determined by the department of public health after consultation with the department of education and the medical profession, to ascertain defects in sight or hearing, postural and other physical defects tending to prevent his receiving the full benefit of his school work, or requiring a modification of the same in order to prevent injury to the child or to secure the best education results, and to ascertain defects of the feet which might unfavorably influence the child's health or physical efficiency, or both, during childhood, adolescence and adult years, and shall require a physical record of each child to be kept in such forms as prescribed by the provisions of section one hundred and eighty-five A of chapter one hundred and eleven. Tests ascertaining postural defects shall be administered at least once annually in grades five through nine. Tests of sight and hearing and postural defects shall be performed by teachers, physicians, optometrists, nurses or other personnel who are approved by the department of public health for the purpose, and the examination of feet shall be made by the school physicians or by podiatrists, in accordance with regulations set up by the department. Upon entering kindergarten or within 30 days of the start of the school year, the parent or guardian of each child shall present to school health personnel certification that the child within the previous 12 months has passed a vision screening conducted by personnel approved by the department of public health and trained in vision screening techniques to be developed by the department of public health in consultation with the department of education. For children who fail to pass the vision screening and for children diagnosed with neurodevelopmental delay, proof of a comprehensive eye examination performed by a licensed optometrist or ophthalmologist chosen by the child's parent or guardian indicating any pertinent diagnosis, treatment, prognosis, recommendation and evidence of follow-up treatment, if necessary, shall be provided. Any child shall be exempt on religious grounds from these examinations upon written request of parent or guardian on condition that the laws and regulations relating to communicable diseases shall not be violated.

Every private school that does not perform these examinations shall be required to inform each parent and guardian of every enrolled pupil that the school does not conduct these examinations and shall recommend that the parent consult with the child's health care provider or local school committee or board of health to ensure that these examinations are conducted.

Any person who conducts an eye examination of a child in response to such child having failed an eye examination given in accordance with the provisions of this section shall forward a written report of the results of the examination to the school health personnel and a copy of said report to a parent or guardian of such child. Said report shall include, but not be limited to, the following:

(a) date of the report;

(b) name and address of the child;

(c) name of the child's school;

(d) type of examination;

(e) a summary of significant findings, including diagnoses, medication used, duration of action of medication, treatment, prognosis, whether or not a return visit is recommended and, if so, when;

(f) recommended educational adjustments for the child, if any, which may include the following: preferential seating in the classroom, eyeglasses for full-time use in school, eyeglasses for part-time use in school, sight-saving eyeglasses or any other recommendations;

(g) name, address and signature of the examiner.

Amended by St.1943, c. 384; St.1951, c. 502, § 1; St.1955, c. 684; St.1956, c. 428; St.1970, c. 443, § 3; St.1973, c. 1197; St.1975, c. 480; St.1980, c. 111; St.1987, c. 643, § 1; St.1992, c. 286, § 148; St.2004, c. 181, eff. Oct. 13, 2004; St.2006, c. 333, § 1, eff. July 1, 2007.

Historical and Statutory Notes

St.1906, c. 502, §§ 5, 6.
St.1919, c. 350, § 96.

§ 58. Repealed, 1945, 543, Sec. 1

§ 59. Superintendent of schools; appointment; compensation; powers and duties

The school committee of a town not in a superintendency union or district shall employ a superintendent of schools and fix his compensation. A superintendent employed under this section or section sixty or sixty-three shall manage the system in a fashion consistent with state law and the policy determinations of that school committee. Upon the recommendation of the superintendent, the school committee may also establish and appoint positions of assistant or associate superintendents, who shall report to the superintendent, and the school committee shall fix the compensation paid to such assistant or associate superintendents. The school committee shall approve or disapprove the hiring of said positions. Such approval by the school committee of the recommendation shall not be unreasonably withheld; provided, however, that upon the request of the superintendent the school committee shall provide an explanation of disapproval.

Amended by St.1993, c. 71, § 52.

Historical and Statutory Notes

St.1854, c. 314.
St.1856, c. 232.
G.S.1860, c. 38, § 35.
St.1860, c. 101.
St.1870, c. 117.
St.1873, c. 108.
St.1874, c. 272.
P.S.1882, c. 44, § 43.
St.1888, c. 431, § 5.
St.1898, c. 466, § 5.
St.1900, c. 248, § 1.
R.L.1902, c. 42, § 40.
St.1911, c. 444.

§ 59A. Superintendents of schools in small towns; appointment; state aid for compensation

In any town, having a valuation of less than two million five hundred thousand dollars, which is not a member of a superintendency union under the provision of section sixty-one, the school committee shall, subject to the approval of the department, employ a full-time or a part-time superintendent of schools, and shall, subject to like approval, fix his compensation and his duties as provided in section fifty-nine.

Expenses incurred under the provisions of this section shall be reimbursable under chapter seventy.

Added by St.1952, c. 506. Amended by St.1953, c. 557; St.1966, c. 14, § 59.

§ 59B. Principals; appointment; compensation; duties; appointment of other personnel

The superintendent of a school district shall appoint principals for each public school within the district at levels of compensation determined in accordance with policies established by the school committee. Principals employed under this section shall be the educational administrators and managers of their schools and shall supervise the operation and management of their schools and school property, subject to the supervision and direction of the superintendent. Principals employed under this section shall be responsible, consistent with district personnel policies and budgetary restrictions and subject to the approval of the superintendent, for hiring all teachers, athletic

coaches, instructional or administrative aides, and other personnel assigned to the school, and for terminating all such personnel, subject to review and prior approval by the superintendent and subject to the provisions of this chapter. The principal of any school which requires an examination for student admission shall be solely and exclusively responsible for hiring all teachers, instructional or administrative aides and other personnel, and for terminating all such personnel without the requirement of review or prior approval by the superintendent before said hiring or termination. This section shall not prevent one person from serving as the principal of two or more elementary schools or the use of teaching principals in such schools.

It shall be the responsibility of the principal in consultation with professional staff of the building to promote participatory decision making among all professional staff for the purpose of developing educational policy.

The school superintendent of a city or town or regional school district including vocational-technical schools, may also appoint administrators and other personnel not assigned to particular schools, at levels of compensation determined in accordance with policies established by the school committee.

Added by St.1973, c. 421. Amended by St.1993, c. 71, § 53; St.1994, c. 60, § 95; St.1996, c. 134, § 2.

§ 59C. School councils; members; meetings; duties

At each public elementary, secondary and independent vocational school in the commonwealth there shall be a school council consisting of the school principal, who shall co-chair the council; parents of students attending the school who shall be selected by the parents of students attending such school who will be chosen in elections held by the local recognized parent teacher organization under the direction of the principal, or if none exists, chosen by a representative process approved by the school committee. Said parents shall have parity with professional personnel on the school councils; teachers who shall be selected by the teachers in such school; other persons, not parents or teachers of students at the school, drawn from such groups or entities as municipal government, business and labor organizations, institutions of higher education, human services agencies or other interested groups including those from school age child care programs; and for schools containing any of the grades nine to twelve, at least one such student; provided, however, that not more that fifty percent of the council shall be non-school members. The principal, except as otherwise provided herein, shall have the responsibility for defining the composition of and forming the group pursuant to a representative process approved by the superintendent and school committee and for convening the first meeting no later than forty days after the first day of school, at which meeting a co-chairman shall be selected. School councils should be broadly representative of the racial and ethnic diversity of the school building and community. For purposes of this paragraph the term "non-school members" shall mean those members of the council, other than parents, teachers, students and staff of the school.

Nothing contained in this section shall require a new school council to be formed if an existing school council fulfills the intent of this section, the parent and teacher members thereof were selected in a manner consistent with the provisions of this section and the membership thereof complies with the aforesaid fifty percent requirement.

Meetings of the school council shall be subject to the provisions of sections twenty-three A, twenty-three B and twenty-three C of chapter thirty-nine.

The school council, including the school principal, shall meet regularly and shall assist in the identification of the educational needs of the students attending the school, make recommendations to the principal for the development, implementation and assessment of the curriculum accommodation plan required pursuant to section 38Q ½, shall assist in the review of the annual school budget and in the formulation of a school improvement plan, as provided below. Parent advisory councils, established under section 3 of chapter 71A, may, at their request, meet at least once annually with the school council.

The principal of each school, in consultation with the school council established pursuant to this section, shall on an annual basis, in conformity with the provisions of section 1I of chapter 69, develop and submit for approval by the district superintendent a plan for improving student performance. Said plan shall be prepared in a manner and form prescribed by the department of education and shall conform to any policies and practices of the district consistent therewith.

Nothing contained in this section shall prevent the school committee from granting a school coun-

cil additional authority in the area of educational policy; provided, however, that school councils shall have no authority over matters which are subject to chapter one hundred and fifty E.

Added by St.1993, c. 71, § 53. Amended by St.1993, c. 495, § 27; St.2000, c. 159, § 148; St.2002, c. 218, §§ 12, 13; St.2003, c. 46, § 82, eff. July 31, 2003.

§ 59D. School-community partnerships; grant program

Superintendents and principals in every school district in the commonwealth shall pursue opportunities to establish school-community partnerships that may advance policy development, staff development, curriculum development, instructional enrichment and may provide material and financial support. The commissioner of education shall assist in and facilitate with the establishment of school-community partnerships. Subject to appropriation, the board shall establish a grant program to assist school districts in developing and implementing such partnerships.

Added by St.1993, c. 71, § 53.

§ 60. Repealed, 1969, 254, Sec. 6

§ 61. Superintendent of schools; employment by a town union; termination of town participation in a union

The school committees of two or more towns, each having a valuation less than two million five hundred thousand dollars, and having an aggregate maximum of seventy-five, and an aggregate minimum of twenty-five, schools, and the committees of four or more such towns, having said maximum but irrespective of said minimum, shall form a union for employing a superintendent of schools. A town whose valuation exceeds said amount may participate in such a union but otherwise subject to this section. Such a union shall not be dissolved except by vote of the school committees representing a majority of the participating towns with the consent of the department, nor by reason of any change in valuation or the number of schools.

A town may terminate its participation in a union by a majority vote of the school committee of the town; provided, however, that said termination shall only be for the purpose of forming an innovation school pursuant to section 92 or establishing different school governance structures. Termination shall be independent of any pending votes regarding dissolution of the union or pending votes by another town regarding its participation.

Amended by St.1951, c. 643, § 1; St.1952, c. 108; St.1953, c. 334; St.2010, c. 12, § 6, eff. Jan. 19, 2010.

Historical and Statutory Notes

St.1888, c. 431, §§ 1, 2.
St.1893, c. 200, §§ 1, 2.
St.1898, c. 466, §§ 1, 2, 6.
St.1900, c. 248, § 2.
R.L.1902, c. 42, §§ 43, 47.
St.1911, c. 399.
St.1912, c. 114.
St.1926, c. 313, § 1.

§ 62. Readjustment of town unions

The department may form or readjust such unions whenever it becomes necessary to include one or more towns otherwise unable to comply with the preceding section, and in so doing may disregard the minimum number of schools prescribed therein, but no such readjustment shall deprive a town of its right to aid under section sixty-five.

Historical and Statutory Notes

St.1903, c. 299.

§ 63. School committees as joint committee; representation: meetings; employment of superintendent, removal

The school committees of such towns shall, for the purposes of the union, be a joint committee and shall be the agent of each participating town, provided that any school committee of more than three members shall be represented therein by its chairman and two of its members chosen by it. The joint committee shall annually, after completion of annual elections in all of the member towns meet at a day and place agreed upon by the chairmen of the constituent committees, and shall organize by choosing a chairman and a secretary. It shall employ for a three year term, a superintendent of schools, determine the relative amount of service to be rendered by him in each town, fix his salary, which shall not be reduced during his term, and may provide for fringe benefits, and other conditions of employment, including but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performance of duties or office, liability insurance, and leave for said superintendent and shall apportion the payment thereof in accordance with section sixty-five among the several towns and certify the respective shares to the several town treasurers. He may be removed, with the consent of the de-

partment, by a two thirds vote of the full membership of the joint committee.

Amended by St.1945, c. 223, § 1; St.1976, c. 38; St.1981, c. 83; St.1985, c. 381, § 1; St.1990, c. 404, § 3; St.1998, c. 463, § 64.

Historical and Statutory Notes

St.1888, c. 431, § 2.
St.1893, c. 200, § 2.
St.1898, c. 466, § 2.
R.L.1902, c. 42, § 44.
St.1911, c. 384.
St.1911, c. 399.
St.1912, c. 114.

§ 64. Union superintendent; compensation

The salary of the superintendent in such a union or in any twelve grade regional school district or the combined salary received by a person serving in a dual capacity as a superintendent in a union and a regional school district or in two or more regional school districts shall be not less than the amounts provided in the following schedule: ninety-five hundred dollars for the first year of service, ten thousand dollars for the second year, ten thousand five hundred dollars for the third year, eleven thousand dollars for the fourth year. If his salary is not in excess of eleven thousand six hundred dollars the union or any twelve grade regional school district or the union and the regional school district or two or more regional school districts, as the case may be, shall, and otherwise may, reimburse him for his actual traveling expenses incurred in the discharge of his duties, but such reimbursement may be limited to six hundred dollars a year.

Amended by St.1949, c. 794; St.1955, c. 565; St.1956, c. 237; St.1956, c. 448, § 1; St.1963, c. 740, § 1.

Historical and Statutory Notes

St.1888, c. 431, § 3.
St.1893, c. 200, § 3.
St.1898, c. 466, § 3.
R.L.1902, c. 42, § 45.
St.1918, c. 109, § 1.
St.1920, c. 371.

§ 65. Repealed, 1978, 367, Sec. 70E

§ 66. Repealed, 1958, 241

§ 67. Superintendents of schools; penalty for accepting fees for obtaining positions; employment of immediate family of certain persons prohibited

A superintendent of schools who accepts any commission, fee, compensation, or reward of any kind for obtaining for any person a position as teacher in the public schools shall be punished by a fine of not less than fifty nor more than five hundred dollars.

A school district shall neither (i) employ a member of the immediate family of a superintendent, central office administrator, or school committee member, nor (ii) assign a member of the immediate family of the principal as an employee at the principal's school, unless written notice is given to the school committee of the proposal to employ or assign such person at least two weeks in advance of such person's employment or assignment. As used in this section, "immediate family" shall have the meaning assigned by subsection (e) of section one of chapter two hundred and sixty-eight A.

Amended by St.1993, c. 71, § 54.

Historical and Statutory Notes

St.1911, c. 731, §§ 3, 4.

§ 68. Duties of towns to maintain schools; transportation of children; school building committee representation

Every town shall provide and maintain a sufficient number of schoolhouses, properly furnished and conveniently situated for the accommodation of all children therein entitled to attend the public schools. If the distance between a child's residence and the school he is entitled to attend exceeds two miles and the nearest school bus stop is more than one mile from such residence, and the school committee declines to furnish transportation, the department, upon appeal of the parent or guardian of the child, may require the town to furnish transportation for children in grades kindergarten through six for a part or for all of the distance between said child's residence and the school. If said distance exceeds three miles, and the distance between the child's residence and a school in an adjoining town giving substantially equivalent instruction is less than three miles, and the school committee declines to pay for tuition in such nearer school, and for transportation in case the distance thereto exceeds two miles, the department, upon like appeal, may require the town of residence to pay for tuition in such nearer school for children in grades kindergarten through six, and if necessary provide for transportation for a part or for the whole of said distance to, such nearer school for children in said grades. Nothing contained in the preceding two sentences shall be construed to limit the obligation of regional school districts to provide transportation for all school children in grades kindergarten through twelve,

pursuant to the provisions in section sixteen C of this chapter. No school committee shall be compelled to furnish transportation on a private way. In the case of transportation provided to students that is not required by this section or by any other general or special law, a school committee may assess fees to the transported student up to an amount sufficient to cover the costs incurred by the district; provided, however, that no student eligible for free or reduced lunch, under the federal school lunch program, shall be required to pay the fee; and provided further, that a school committee may choose to exempt families at other income levels as it may determine. The school committee, unless the town otherwise directs, shall have general charge and superintendence of the schoolhouses, shall keep them in good order, and shall, at the expense of the town, procure a suitable place for the schools, if there is no schoolhouse, and provide fuel and all other things necessary for the comfort of the pupils. Each school shall comply with the requirements regarding pesticide applications as set forth in sections 6C to 6*I*, inclusive, of chapter 132B. Whenever a town shall undertake to provide a schoolhouse, the town shall appoint at least one member of the school committee, or its designee, to serve on the agency, board or committee to which the planning and construction or other acquisition of such schoolhouse is delegated.

Amended by St.1934, c. 97, § 1; St.1977, c. 158; St.1991, c. 138, § 133; St.2000, c. 85, § 3; St.2003, c. 46, § 83, eff. July 31, 2003.

Historical and Statutory Notes

St.1827, c. 143, § 10.
St.1830, c. 116.
R.S.1836, c. 23, § 32.
St.1859, c. 252, §§ 4, 5.
G.S.1860, c. 38, §§ 36, 40.
St.1871, c. 145.
P.S.1882, c. 44, §§ 46, 50.
R.L.1902, c. 42, § 49.
St.1919, c. 292, § 9.
St.1920, c. 78.

§ 69. Display of national flags; pledge of allegiance; penalty for violation

The school committee shall provide for each schoolhouse under its control, which is not otherwise supplied, flags of the United States of silk or bunting not less than two feet long, such flags or bunting to be manufactured in the United States, and suitable apparatus for their display as hereinafter provided. A flag shall be displayed, weather permitting, on the school building or grounds on every school day and on every legal holiday or day proclaimed by the governor or the President of the United States for especial observance; provided, that on stormy school days, it shall be displayed inside the building. A flag shall be displayed in each assembly hall or other room in each such schoolhouse where the opening exercises on each school day are held. Each teacher at the commencement of the first class of each day in all grades in all public schools shall lead the class in a group recitation of the "Pledge of Allegiance to the Flag". A flag shall be displayed in each classroom in each such schoolhouse. Failure for a period of five consecutive days by the principal or teacher in charge of a school equipped as aforesaid to display the flag as above required, or failure for a period of two consecutive weeks by a teacher to salute the flag and recite said pledge as aforesaid, or to cause the pupils under his charge so to do, shall be punished for every such period by a fine of not more than five dollars. Failure of the committee to equip a school as herein provided shall subject the members thereof to a like penalty.

Amended by St.1935, c. 258; St.1969, c. 77; St.1977, c. 333; St.1998, c. 463, § 65.

Historical and Statutory Notes

R.L.1902, c. 42, § 50.
St.1909, c. 229.
St.1911, c. 232.
St.1919, c. 84.

§ 69A. Plaque reading "For God and Country"; placement on public school buildings

On every public school building within the commonwealth there may be placed in a conspicuous location a suitable plaque which shall contain the words "For God and Country". Such plaques may be donated by veterans or civic organizations or individuals.

Added by St.1965, c. 502.

§ 70. Location of schools

A town may, at a town meeting, determine the situation of its schoolhouses.

Historical and Statutory Notes

St.1826, c. 143, § 10.
St.1829, c. 116.
R.S.1836, c. 23, §§ 28, 32.
St.1848, c. 237.
St.1859, c. 252, § 4.
G.S.1860, c. 38, § 37.
P.S.1882, c. 44, § 47.
R.L.1902, c. 42, § 51.
St.1921, c. 486, § 18.

§ 71. Use of school property; purposes

For the purpose of promoting the usefulness of public school property the school committee of any town may conduct such educational and recreational activities in or upon school property under its control, and, subject to such regulations as it may establish, and, consistently and without interference with the use of the premises for school purposes, shall allow the use thereof by individuals and associations for such educational, recreational, social, civic, philanthropic and like purposes as it deems for the interest of the community. The affiliation of any such association with a religious organization shall not disqualify such association from being allowed such a use for such a purpose. The use of such property as a place of assemblage for citizens to hear candidates for public office shall be considered a civic purpose within the meaning of this section. A school committee shall award concessions for food at any field under its control only to the highest responsible bidder. This section shall not apply to Boston.

Amended by St.1935, c. 193; St.1966, c. 344.

Historical and Statutory Notes

St.1911, c. 367, § 1.
St.1912, c. 157.
St.1912, c. 320, §§ 1, 2.
St.1913, c. 391.
St.1914, c. 538.
St.1923, c. 50.

§ 71A. Highway safety stations; designation, discontinuance

A school committee may, subject, however, to all other provisions of law, designate the locations for the erection of highway safety stations for children awaiting a school bus; provided, that such locations have been approved by the school superintendent or, as his designee, the school transportation officer. A school committee may order the discontinuance of the use of any such station by the children if it is not constructed of durable material with a floor of concrete raised above ground level, or is not kept clean, well painted, free of snow, and suitably maintained at all times.

Added by St.1965, c. 404.

§ 71B. Adult physical fitness programs

A school committee may offer adult physical fitness programs to be held in the gymnasium of any school at any time during which such gymnasium facilities are not being used for school purposes.

Added by St.1968, c. 283.

§ 71C. Community school programs; receipts; deposit and expenditure

All moneys received by the school committee in connection with the conduct of community school programs, so designated by prior vote of said committee, shall be deposited with the treasurer of the town or city. The school committee may expend, from such receipts and without further appropriation, any sums not in excess of three thousand dollars within any fiscal year for the purchase of materials and equipment for such programs.

Added by St.1973, c. 800.

§ 71D. Prepayment of tuition to private schools or program sources

A school committee of any city, town, or regional school district may authorize the prepayment of tuition for a period not exceeding three months to any approved private school or approved program source which a student is attending under the provisions of chapter seventy-one B, and the city, town or regional school district treasurer shall be required to approve and pay such monies in accordance with the authorization of the school committee.

Added by St.1977, c. 348, § 2. Amended by St.1985, c. 631, § 2.

§ 71E. Appropriations for and expenditure of receipts from adult education and continuing education programs

In any city or town which accepts this section, all moneys received by the school committee in connection with the conduct of adult education and continuing education programs, including, but not limited to adult physical fitness programs conducted under section seventy-one B, summer school programs and programs designated by prior vote of said committee as community school programs, and in connection with the use of school property under section seventy-one, shall be deposited with the treasurer of the town or city and held as separate accounts. The receipts held in such a separate account may be expended by said school committee without further appropriation for the purposes of the program or programs from which the receipts held in such account were derived or, in the case of the use of school property account, for expenses incurred in making school property available for such use, notwithstanding the provisions of section fifty-three of chapter forty-four of the General Laws. A city or town may appropriate funds for the conduct of any such program or for

expenses incurred in making school property available for such use, which funds shall be expended by the school committee in addition to funds provided from other sources. Three years from the date a city or town accepts the provisions of this paragraph, and every third year thereafter, said city or town may act to rescind its original acceptance.
Added by St.1977, c. 639.

§ 71F. Nonresident or foster care students; deposit of tuition payments and state reimbursements; expenditures and appropriations

In any city or town which accepts this section, all monies received by the school committee as tuition payments for nonresident students and as state reimbursements for students who are foster care children shall be deposited with the treasurer of the town or city and held as separate accounts. The receipts held in such a separate account may be expended by said school committee without further appropriation for expenses incurred in providing education for such nonresident students or for such students who are foster care children, notwithstanding the provisions of section fifty-three of chapter forty-four. A city or town may appropriate funds for expenses incurred in providing education for such nonresident students or for such students who are foster care children, which funds shall be expended by the school committee in addition to funds provided from other sources.
Added by St.1982, c. 43.

§ 72. Sale of lunches

The school committee may prepare and sell lunches at one or more school buildings for the pupils and teachers of the public schools at such prices as it deems reasonable.

Historical and Statutory Notes

St.1913, c. 575, § 1.
St.1919, c. 292, §§ 10, 21.

§ 73. Closing of school for teachers' meetings

The superintendent of schools may, unless the committee votes otherwise, direct the closing of schools under his supervision in order that teachers may attend a meeting of a county association of teachers or an institute, conference, or convention held under the direction of the department.

Historical and Statutory Notes

St.1919, c. 292, § 11.

§ 74. Management of schools funds by private corporations

This chapter shall not affect the right of any corporation established in a town to manage any estate or funds given or obtained for the purpose of supporting schools therein, or in any wise affect such estate or funds.

Historical and Statutory Notes

St.1826, c. 143, § 18.
R.S.1836, c. 23, § 59.
G.S.1860, c. 38, § 13.
P.S.1882, c. 44, § 18.
R.L.1902, c. 42, § 52.

§ 75. Extended courses of instruction

If the school committee of any city or town determines that sufficient need exists in such city or town for providing a course of school instruction beyond the regular high school course of instruction, it shall submit in writing a plan of such course to the state department of education for its written approval, and may thereafter establish and maintain such extended course of instruction on junior college level, and public funds may be appropriated for the purpose; provided, that the course of instruction proposed in said plan shall conform to such standards as said department may establish and shall be maintained by said school committee under the general regulations of said department.
Added by St.1948, c. 620, § 5.

§ 76. Rules of admission

Any such school committee shall establish as one of the rules of admission to the benefits of such extended course of instruction that the persons therein enrolled, or responsible agents acting in their behalf, shall pay into the treasury of such city or town, toward the cost of maintaining such course, such sum, not exceeding the actual cost thereof, as said school committee shall determine. If a city or town does not maintain such course of instruction, it may pay the charge authorized by this section in the case of any person who resides therein and obtains from its school committee a certificate to take the course in another city or town maintaining the same.
Added by St.1948, c. 620, § 5.

§ 77. Joint establishment of extended courses

Two or more cities or towns in which the establishment of such extended course of instruction has been voted and approved as hereinabove provided

may jointly establish and maintain such a course for the accommodation of said municipalities. The management and control of such course of instruction, the location of the schoolhouse where such course will be maintained and the apportionment of the expenses of the maintenance of the course and all incidental expenses shall be determined, on a pro rata pupil basis, by the school committees of the participating towns.
Added by St.1948, c. 620, § 5.

§ 78. Repealed, 1978, 367, Sec. 70E

§ 79. Junior College designation, degrees

Any city or town may use the designation "Junior College" with respect to its maintenance of such extended course of instruction at a particular school therein, and the school committee of such city or town may, subject to the approval of the board of higher education, grant any one or more of the degrees of associate in arts, associate in engineering or associate in science to persons who complete such course of instruction.

Notwithstanding the provisions of the preceding paragraph, a school established hereunder may be designated by a name which does not include the word "junior"; provided, however, that the charter of such school shall require that such name, when used on its official documents and publications, be accompanied by a descriptive phrase which, in the judgment of the board of regents, will effectively distinguish such school from a senior college.
Added by St.1948, c. 620, § 5. Amended by St.1958, c. 168; St.1965, c. 572, § 17; St.1990, c. 202.

§ 80. Lunch period for teachers

Every teacher employed in any public school whose duties commence prior to twelve o'clock noon, shall be allowed a thirty-minute lunch period between the hours of ten o'clock in the forenoon and one o'clock in the afternoon, and shall not be required to perform any duties during said lunch period; provided, however, that the provisions of this section shall apply only in a city or town which accepts this section by vote of its school committee.
Added by St.1958, c. 127, § 1. Amended by St.1958, c. 368.

§ 81. Junior colleges; restriction on establishment

Notwithstanding the provisions of sections seventy-five to seventy-nine, inclusive, no junior college shall be established by a city or town after January first, nineteen hundred and fifty-nine.
Added by St.1958, c. 605, § 2.

§ 82. Public secondary schools; right of students to freedom of expression; limitations; definitions

The right of students to freedom of expression in the public schools of the commonwealth shall not be abridged, provided that such right shall not cause any disruption or disorder within the school. Freedom of expression shall include without limitation, the rights and responsibilities of students, collectively and individually, (a) to express their views through speech and symbols, (b) to write, publish and disseminate their views, (c) to assemble peaceably on school property for the purpose of expressing their opinions. Any assembly planned by students during regularly scheduled school hours shall be held only at a time and place approved in advance by the school principal or his designee.

No expression made by students in the exercise of such rights shall be deemed to be an expression of school policy and no school officials shall be held responsible in any civil or criminal action for any expression made or published by the students.

For the purposes of this section and sections eighty-three to eighty-five, inclusive, the word student shall mean any person attending a public secondary school in the commonwealth. The word school official shall mean any member or employee of the local school committee.
Added by St.1974, c. 670.

§ 83. Dress and appearance of students protected

School officials shall not abridge the rights of students as to personal dress and appearance except if such officials determine that such personal dress and appearance violate reasonable standards of health, safety and cleanliness.
Added by St.1974, c. 670.

§ 84. Discipline of students on matters unrelated to school-sponsored activities prohibited

No student shall be suspended, expelled, or otherwise disciplined on account of marriage, pregnancy, parenthood or for conduct which is not connected with any school-sponsored activities; provided, however, that in the case of a pregnant

student, the school committee may require that the student be under the supervision of a physician.
Added by St.1974, c. 670.

§ 85. Guidelines implementing Secs. 82 to 84; rules and regulations; adoption; emergencies; procedures

The board of education may adopt guidelines to implement the provisions of sections eighty-two to eighty-four, inclusive. School committees shall adopt rules and regulations consistent with guidelines of the board of education and the provisions of sections eighty-two to eighty-four, inclusive. The rules and regulations to be made by school officials shall be established only after notice to public school students and after a public hearing at which students' views, shall be presented and shall be taken into consideration by such officials. Said rules and regulations shall provide that, notwithstanding the existence of the rights and responsibilities described in the three preceding sections, school committees or school officials may take necessary action in cases of emergency. Students may petition for a hearing, to be held as soon as practicable after such emergency, as to whether such rules and regulations shall be revoked or modified.
Added by St.1974, c. 670.

§ 86. Application of Secs. 83 to 85

The provisions of sections eighty-three to eighty-five, inclusive, shall apply only to cities and towns which accept the same.
Added by St.1974, c. 670. Amended by St.1988, c. 137.

§ 87. Intelligence test scores; records

The score of any group intelligence test administered to a student enrolled in a public school shall be removed from the record of said student at the end of the school year in which such test was so administered.
Added by St.1979, c. 91.

§ 88. Military recruiters; on-campus recruiting opportunities

Notwithstanding any other provision of law to the contrary, all public high schools shall offer the same student information and on-campus recruiting opportunities to representatives of state or United States armed services as they offer to non-military recruiters.
Added by St.1991, c. 145, § 35.

§ 89. Commonwealth charter schools; Horace Mann charter schools; applications; enrollment; employees; funding

(a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:—

"Board", the board of elementary and secondary education.

"Charter school", commonwealth charter schools and Horace Mann charter schools unless specifically stated otherwise.

"Commissioner", the commissioner of elementary and secondary education.

"Department", the department of elementary and secondary education.

"District", or "school district", the school department of a city, town, regional school district, or county agricultural school.

"Superintendent", the superintendent of the district.

(b) The purposes of establishing charter schools are: (i) to stimulate the development of innovative programs within public education; (ii) to provide opportunities for innovative learning and assessments; (iii) to provide parents and students with greater options in selecting schools within and outside their school districts; (iv) to provide teachers with a vehicle for establishing schools with alternative, innovative methods of educational instruction and school structure and management; (v) to encourage performance-based educational programs; (vi) to hold teachers and school administrators accountable for students' educational outcomes; and (vii) to provide models for replication in other public schools.

(c) A commonwealth charter school shall be a public school, operated under a charter granted by the board, which operates independently of a school committee and is managed by a board of trustees. The board of trustees of a commonwealth charter school, upon receiving a charter from the board, shall be deemed to be public agents authorized by the commonwealth to supervise and control the charter school.

A Horace Mann charter school shall be a public school or part of a public school operated under a charter approved by the school committee and the local collective bargaining unit in the district in which the school is located; provided that all charters shall be granted by the board of elementary

and secondary education. A Horace Mann charter school shall have a memorandum of understanding with the school committee of the district in which the charter school is located which, at a minimum, defines the services and facilities to be provided by the district to the charter school and states the funding of the charter school by the district. A Horace Mann charter school established as a conversion of an existing public school shall not require approval of the local collective bargaining unit, but shall require a memorandum of understanding agreement regarding any waivers to applicable collective bargaining agreements; provided further, that the memorandum of understanding shall be approved by a majority of the school faculty; provided further, that Horace Mann charter schools that are conversion of existing public schools shall not be subject to clause (1) of subsection (i). A vote by the school faculty shall be held and finalized within 30 days of submission of the charter school application to the board of elementary and secondary education. A Horace Mann charter school shall be operated and managed by a board of trustees independent of the school committee which approved the school. The board of trustees may include a member of the school committee.

(d) Persons or entities eligible to submit an application to establish a charter school shall include, but not be limited to: (i) a non-profit business or corporate entity; (ii) 2 or more certified teachers; or (iii) 10 or more parents; provided, however, that for profit business or corporate entities shall be prohibited from applying for a charter. The application may be filed in conjunction with a college, university, museum or other similar non-profit entity. Private and parochial schools shall not be eligible for charter school status. The board may authorize a single board of trustees to manage more than 1 charter school; provided, however, that each school is issued its own charter. The commissioner shall provide technical assistance to public school districts to assist in the development of proposals for Horace Mann charter schools.

(e) The board shall establish the information needed in an application for the approval of a charter school; provided that the application shall include, but not be limited to, a description of: (i) the mission, purpose, innovation and specialized focus of the proposed charter school; (ii) the innovative methods to be used in the charter school and how they differ from the district or districts from which the charter school is expected to enroll students; (iii) the organization of the school by ages of students or grades to be taught, an estimate of the total enrollment of the school and the district or districts from which the school will enroll students; (iv) the method for admission to the charter school; (v) the educational program, instructional methodology and services to be offered to students, including research on how the proposed program may improve the academic performance of the subgroups listed in the recruitment and retention plan; (vi) the school's capacity to address the particular needs of limited English-proficient students, if applicable, to learn English and learn content matter, including the employment of staff that meets the criteria established by the department; (vii) how the school shall involve parents as partners in the education of their children; (viii) the school governance and bylaws; (ix) a proposed arrangement or contract with an organization that shall manage or operate the school, including any proposed or agreed upon payments to such organization; (x) the financial plan for the operation of the school; (xi) the provision of school facilities and pupil transportation; (xii) the number and qualifications of teachers and administrators to be employed; (xiii) procedures for evaluation and professional development for teachers and administrators; (xiv) a statement of equal educational opportunity which shall state that charter schools shall be open to all students, on a space available basis, and shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or academic achievement; (xv) a student recruitment and retention plan, including deliberate, specific strategies the school will use to ensure the provision of equal educational opportunity as stated in clause (xiv) and to attract, enroll and retain a student population that, when compared to students in similar grades in schools from which the charter school is expected to enroll students, contains a comparable academic and demographic profile; and (xvi) plans for disseminating successes and innovations of the charter school to other non-charter public schools.

(f) The student recruitment and retention plan required under clause (xv) of subsection (e) shall include, but not be limited to, a detailed description of deliberate, specific strategies the school will use to maximize the number of students who successfully complete all school requirements and prevent students from dropping out. The student

recruitment and retention plan shall be updated annually and shall include annual goals for: (i) recruitment activities; (ii) student retention activities; and (iii) student retention.

(g) To ensure that a commonwealth charter school shall fulfill its obligations under its recruitment and retention plan, the school district or districts from which the commonwealth charter school is expected to enroll students shall annually provide, at the request of a commonwealth charter school, to a third party mail house authorized by the department, the addresses for all students in the district eligible to enroll in the school, unless a student's parent or guardian requests that the district withhold that student's information; provided, however, that the department may require the charter school to send the mailing in the most prevalent languages of the district or districts that the charter school is authorized to serve.

At the request of a school district from which a commonwealth charter school enrolls students, the charter school shall provide to a third party mail house the addresses for all students currently enrolled in the commonwealth charter school from the district; provided, however, that the information shall not be provided if a student's parent or guardian requests that the school withhold that student's information. Each district shall be permitted to supply a mailing to the third party mail house and pay for it to be copied and mailed to families of students from said district enrolled in the commonwealth charter school.

(h) An application submitted for the establishment of a commonwealth charter school shall: (i) be submitted to the board for approval under this section; and (ii) be filed with the local school committee for each school district from which the charter school is expected to enroll students. Before final approval to establish a commonwealth charter school, the board shall hold a public hearing on the application in the school district in which the proposed charter school is to be located and solicit and review comments on the application from the local school committee of each school district from which the charter school is expected to enroll students and any contiguous districts. At least 1 member of the board shall attend the public hearing. A comprehensive written summary of all materials prepared by the department or its administrative subdivisions, which evaluates or recommends approval or disapproval of a charter application must be delivered to the members of the board, the applicant, in support of, or in opposition to, the school submitted not later than 3 days before any board vote on the charter application.

All material in support of, or in opposition to, the school submitted to the department or the board shall be made available to the applicant and affected school districts before a vote by the board on a commonwealth charter school application.

(i)(1) Not more than 120 charter schools shall be allowed to operate in the commonwealth at any time, excluding those approved pursuant to paragraph (3); provided, however, that of the 120 charter schools, not more than 48 shall be Horace Mann charter schools; provided, however, notwithstanding subsection (c) the 14 new Horace Mann charter schools shall not be subject to the requirement of an agreement with the local collective bargaining unit prior to board approval; provided, further, that after the charter for these 14 new Horace Mann charter schools have been granted by the board, the schools shall develop a memorandum of understanding with the school committee and the local union regarding any waivers to applicable collective bargaining agreements; provided, further, that if an agreement is not reached on the memorandum of understanding at least 30 days before the scheduled opening of the school, the charter school shall operate under the terms of its charter until an agreement is reached; provided, further, that not less 4 of the new Horace Mann charter schools shall be located in a municipality with more than 500,000 residents; and not more than 72 shall be commonwealth charter schools. The board shall not approve a new commonwealth charter school in any community with a population of less than 30,000 as determined by the most recent United States Census estimate, unless it is a regional charter school.

Applications to establish a charter school shall be submitted to the board annually by November 15. The board shall review the applications and grant new charters in February of the following year.

(2) In any fiscal year, no public school district's total charter school tuition payment to commonwealth charter schools shall exceed 9 per cent of the district's net school spending; provided, however, that a public school district's total charter tuition payment to commonwealth charter schools shall not exceed 18 per cent of the district's net school spending if the school district qualifies under paragraph (3). The commonwealth shall incur charter school tuition payments for siblings attending commonwealth charter schools to the extent

that their attendance would otherwise cause the school district's charter school tuition payments to exceed 9 per cent of the school district's net school spending or 18 per cent for those districts that qualify under said paragraph (3).

Not less than 2 of the new commonwealth charters approved by the board in any year shall be granted for charter schools located in districts where overall student performance on the statewide assessment system approved by the board under section 1*I* of chapter 69 is in the lowest 10 per cent statewide in the 2 years preceding the charter application.

In any fiscal year, the board shall approve only 1 regional charter school application of any commonwealth charter school located in a school district where overall student performance on the statewide assessment system is in the top 10 per cent in the year preceding charter application. The board may give priority to applicants that have demonstrated broad community support, an innovative educational plan, a demonstrated commitment to assisting the district in which it is located in bringing about educational change and a record of operating at least 1 school or similar program that demonstrates academic success and organizational viability and serves student populations similar to those the proposed school seeks to serve.

(3) In any fiscal year, if the board determines based on student performance data collected pursuant to section 1*I*, said district is in the lowest 10 per cent of all statewide student performance scores released in the 2 consecutive school years before the date the charter school application is submitted, the school district's total charter school tuition payment to commonwealth charter schools may exceed 9 per cent of the district's net school spending but shall not exceed 18 per cent. For a district qualifying under this paragraph whose charter school tuition payments exceed 9 per cent of the school district's net school spending, the board shall only approve an application for the establishment of a commonwealth charter school if an applicant, or a provider with which an applicant proposes to contract, has a record of operating at least 1 school or similar program that demonstrates academic success and organizational viability and serves student populations similar to those the proposed school seeks to serve, from the following categories of students, those: (i) eligible for free lunch; (ii) eligible for reduced price lunch; (iii) that require special education; (iv) limited English-proficient of similar language proficiency level as measured by the Massachusetts English Proficiency Assessment examination; (v) sub-proficient, which shall mean students who have scored in the "needs improvement", "warning" or "failing" categories on the mathematics or English language arts exams of the Massachusetts Comprehensive Assessment System for 2 of the past 3 years or as defined by the department using a similar measurement; (vi) who are designated as at risk of dropping out of school based on predictors determined by the department; (vii) who have dropped out of school; or (viii) other at-risk students who should be targeted to eliminate achievement gaps among different groups of students. For a district approaching its net school spending cap, the board shall give preference to applications from providers building networks of schools in more than 1 municipality.

The recruitment and retention plan of charter schools approved under this paragraph shall, in addition to the requirements under subsections (e) and (f), include, but not limited to: (i) a detailed description of deliberate, specific strategies the charter school shall use to attract, enroll and retain a student population that, when compared to students in similar grades in schools from which the charter school shall enroll students, contains a comparable or greater percentage of special education students or students who are limited English-proficient of similar language proficiency as measured by the Massachusetts English Proficiency Assessment examination and 2 or more of the following categories: students eligible for free lunch; (ii) students eligible for reduced price lunch; students who are sub-proficient, those students who have scored in the "needs improvement", "warning" or "failing" categories on the mathematics or English language arts exams of the Massachusetts Comprehensive Assessment System for 2 of the past 3 years or as defined by the department using a similar measurement; (iii) students who are determined to be at risk of dropping out of school based on predictors determined by the department; (iv) students who have dropped out of school; or (v) other at-risk students who should be targeted in order to eliminate achievement gaps among different groups of students. A charter school approved under this section shall supply a mailing in the most prevalent languages of the district the charter is authorized to serve to a third party mail house and pay for it to be copied and mailed to eligible students. If a school is or shall be located in a

district with 10 per cent or more of limited English-proficient students, the recruitment strategies shall include a variety of outreach efforts in the most prevalent languages of the district. The recruitment and retention plan shall be updated each year to account for changes in both district and charter school enrollment.

If a district is no longer in the lowest 10 per cent, the net school spending cap shall be 9 per cent, unless the district net school spending was above 9 per cent in the year prior to moving out of the lowest 10 per cent in which case the net school spending cap shall remain at the higher level plus enrollment previous approved by the board. The department shall determine and make available to the public a list of the school districts in said lowest 10 per cent.

(j) The board shall make the final determination on granting charter school status and may condition charters on the applicant's taking certain actions or maintaining certain conditions. The board shall establish criteria for the approval of a charter application and recommendations to the board shall be based upon and reference those criteria.

If a final application is deemed inadequate by the department, the department may provide feedback to the applicant and invite it to submit a stronger application subsequently. Once a final application has been filed, only minor, non-substantive amendments shall be allowed. The department shall maintain a written detailed summary of interviews it conducts with final charter applicants and include that summary with the final application materials that are provided to the board, local school officials and the public.

(k) A charter school established under a charter granted by the board shall be a body politic and corporate with all powers necessary or desirable for carrying out its charter program, including, but not limited to, the power to:

(1) adopt a name and corporate seal; provided that any name selected must include the words "charter school";

(2) sue and be sued, but only to the same extent and upon the same conditions that a municipality can be sued;

(3) acquire real property, from public or private sources, by lease, lease with an option to purchase or by gift, for use as a school facility; provided, however, in the case of a Horace Mann charter school, the approval of the local school committee shall be obtained before acquisition of any such real property owned or controlled by the body;

(4) receive and disburse funds for school purposes;

(5) make contracts and leases for the procurement of services, equipment and supplies; provided, however, that if the charter school intends to procure substantially all educational services under contract with another person, the terms of such a contract must be approved by the board either as part of the original charter or by way of an amendment thereto; provided, further that the board shall not approve any such contract terms, the purpose or effect of which is to avoid the prohibition of this section against charter school status for private and parochial schools;

(6) incur temporary debt in anticipation of receipt of funds; provided that a Horace Mann school shall obtain the approval of the local school committee and appropriate local appropriating authorities and officials relative to any proposed lien or encumbrance upon public school property or relative to any financial obligation for which the local school district shall become legally obligated; and provided further, that notwithstanding any general or special law to the contrary, the terms of repayment of any charter school's debt shall not exceed the duration of the school's charter without the approval of the board;

(7) solicit and accept grants or gifts for school purposes; and

(8) have such other powers available to a business corporation formed under chapter 156B that are not inconsistent with this chapter.

(*l*) Charter schools shall not charge a public school for the use or replication of a part of their curriculum subject to the prescriptions of a contract between the charter schools and any third party providers.

(m) Charter schools shall be open to all students, on a space available basis, and shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, or proficiency in the English language or a foreign language or academic achievement. Charter schools may limit enrollment to specific grade levels and may structure curriculum around particular areas of focus such as mathematics, science or the arts. There shall be no application fee for admission to a charter

school. There shall be no tuition charge for students attending charter schools.

(n) Preference for enrollment in a commonwealth charter school shall be given to students who reside in the city or town in which the charter school is located. Priority for enrollment in a Horace Mann charter school shall be given first to students actually enrolled in the school on the date that the application is filed with the board and to their siblings; second to other students actually enrolled in the public schools of the district where the Horace Mann charter school is to be located; and third to other resident students.

If the total number of students who are eligible to attend and apply to a charter school and who reside in the city or town in which the charter school is located or are siblings of students already attending said charter school, is greater than the number of spaces available, an admissions lottery, including all eligible students applying, shall be held to fill all of the spaces in that school from among the students. If there are more spaces available than eligible applicants from the city or town in which the charter school is located and who are siblings of current students and more eligible applicants than spaces left available, a lottery shall be held to determine which of the applicants shall be admitted; provided, however, that a lottery conducted for Horace Mann charter schools shall reflect the enrollment priorities of this section. Notwithstanding this subsection, upon application by the board of trustees of a charter school or by the persons or entities seeking to establish a charter school, the board may amend or grant a charter designating such school a regional charter school; provided, however, that such regional charter school shall be exempt from the local preference provision of this paragraph; provided further, that such regional charter school shall continue to grant a preference of siblings of currently enrolled students; and provided further, that if the number of applicants remaining is greater than the number of spaces available, such regional charter school shall conduct a single lottery to determine which applicants shall be admitted.

In any instance where a charter school approved after January 1, 2011 enrolls more than 20 per cent of its total enrollment from school districts not included in its original charter pursuant to subsection (h) for 2 consecutive years, the charter school shall submit an application to the board for an amendment to its charter that reflects its actual enrollment patterns; provided further that upon renewal of a charter school approved prior to January 1, 2011, the board shall establish a timeline of not less than 5 years for the charter to comply with this requirement.

Nothing in this section shall be construed to require a charter school to unenroll any student currently in attendance at the time this act takes effect.

When a student stops attending a charter school for any reason, the charter school shall fill the vacancy with the next available student on the waitlist for the grade in which the vacancy occurs and shall continue through the waitlist until a student fills the vacant seat. If there is no waitlist, a charter school shall publicize an open seat to the students of the sending district or districts and make attempts to fill said vacant seat. Charter schools shall attempt to fill vacant seats up to February 15, provided, however, that charter schools may but are not required to fill vacant after February 15. If a vacancy occurs after February 15, such vacancy shall remain with the grade cohort and shall be filled in the following September if it has not previously been filled. A vacancy occurring after February 15 shall not be filled by adding a student to a lower grade level. Charter schools shall attempt to fill vacant seats up to February 15, excluding seats in the last half of the grades offered by the charter school, and grades 10, 11 and 12. Within 30 days of a vacancy being filled, the charter school shall send the name of the student filling such vacancy to the department for the purposes of the department updating its waitlist.

The names of students who entered the lottery but did not gain admission shall be maintained on a waitlist, which shall be forwarded to the department not later than June 1 in the year in which the lottery is held. In addition to the names of students, the school shall supply to the department each student's home address, telephone number, grade level and other information the department deems necessary. The department shall maintain a consolidated waitlist for each municipality in order to determine the number of individual students in each municipality seeking admission to charter schools.

(*o*) Each charter school shall annually, not later than April 1, notify each public school district in writing of the number and grade levels of students who will be attending the charter school from that district the following September as well as the

number of new students who will be transferring from that district to the charter school in the following September. Tuition for charter school students shall only be paid for the number of students for whom notification has been reported by April 1. Tuition for charter school students shall be paid only for students actually enrolled in the school.

(p) A student may withdraw from a charter school at any time and enroll in another public school where the student resides.

A student may be expelled from a charter school based on criteria determined by the board of trustees, and approved by the board, with the advice of the principal and teachers; provided, however, that charter school policies shall be consistent with sections 37H and 37H½.

(q) A charter school may be located in part of an existing public school building, in space provided on a private work site, in a public building or any other suitable location; provided, however, that no school building assistance funds authorized under chapter 70B shall be awarded to a commonwealth charter school for the purpose of constructing, reconstructing or improving a commonwealth charter school.

(r) The school committee of each district where a Horace Mann charter school is located shall develop a plan to disseminate innovative practices of the charter school to other public schools within the district subject to the provisions of any contract between the Horace Mann charter school and any third party provider.

The commissioner shall facilitate the dissemination of successful innovation programs of charter schools and provide technical assistance for other school districts to replicate such programs. Each charter school shall collaborate with its sending district on the sharing of innovative practices.

(s) A charter school shall operate in accordance with its charter and the provisions of law regulating other public schools; provided, however, that sections 41 and 42 shall not apply to employees of commonwealth charter schools. Charter schools shall comply with the chapters 71A and 71B; provided, however, that the fiscal responsibility of a special needs student currently enrolled in or determined to require a private day or residential school shall remain with the school district where the student resides. If a charter school expects that a special needs student currently enrolled in the charter school may be in need of the services of a private day or residential school, it shall convene an individual education plan team meeting for the student. Notice of the team meeting shall be provided to the special education department of the school district in which the child resides at least 5 days in advance. Personnel from the school district in which the child resides shall be allowed to participate in the team meeting concerning future placement of the child.

(t) Horace Mann charter schools shall be exempt from local collective bargaining agreements to the extent provided by the terms of its charter; provided, however, that employees of the Horace Mann charter school shall continue to be members of the local collective bargaining unit and shall accrue seniority and shall receive, at a minimum, the salary and benefits established in the contract of the local collective bargaining unit where the Horace Mann charter school is located. Employees of Horace Mann charter schools shall be exempt from all union and school committee work rules to the extent provided by the school's charter. Employees in Horace Mann charter schools shall be required to work the full work day and work year to the extent provided by the terms of the school's charter.

(u) Notwithstanding this section or any other general or special law to the contrary, for the purposes of chapter 268A: (i) a charter school shall be deemed to be a state agency; and (ii) the appointing official of a member of the board of trustees of a charter school shall be deemed to be the commissioner. Members of boards of trustees of charter schools operating under the this section shall file a disclosure annually with the state ethics commission, the department and the city or town clerk wherein such charter school is located. The disclosure is in addition to the requirements of said chapter 268A and a member of a board of trustees must also comply with the disclosure and other requirements of said chapter 268A. The form of the disclosure shall be prescribed by the ethics commission and shall be signed under penalty of perjury. Such form shall be limited to a statement in which members of the board of trustees shall disclose any financial interest that they or a member of their immediate families, as defined in section 1 of said chapter 268A, have in any charter school located in the commonwealth or in another state or with a person doing business with a charter school

Each member of a board of trustees of a charter school shall file such disclosure for the preceding

calendar year with the commission within 30 days of becoming a member of the board of trustees, by September 1 of each year thereafter that the person is a member of the board and by September 1 of the year after the person ceases to be a member of the board; provided, however, that no member of a board of trustees shall be required to file a disclosure for the year in which he ceases to be a member of the board if he served less than 30 days in that year.

(v) Students in charter schools shall be required to meet the same performance standards, testing and portfolio requirements set by the board for students in other public schools.

(w) The board of trustees, in consultation with the teachers, shall determine the school's curriculum and develop the school's annual budget. The board of trustees of each Horace Mann charter school shall annually submit to the superintendent and school committee of the district in which the school is located a budget request for the following fiscal year. The school committee shall act on the budget request in conjunction with its actions on the district's overall budget. Each Horace Mann charter school shall receive in response to the budget request not less than it would have under the district's budgetary allocation rules. The board of trustees may appeal any disproportionate budgetary allocation to the commissioner, who shall determine an equitable funding level for the school and shall require the school committee to provide the funding.

Following the appropriation of the district's operating budget for the fiscal year, the amount approved by the local appropriating authority for the operation of each Horace Mann charter school shall be available for expenditure by the board of trustees of the school for any lawful purpose without further approval by the superintendent or the school committee. A Horace Mann charter school shall not expend or incur obligations in excess of its budget request; provided, however, that a Horace Mann charter school may spend federal and state grants and other funds received independent of the school district not accounted for in the charter school's budget request without prior approval from the superintendent or the school committee.

(x) Upon approval of a Horace Mann charter school by the board, the superintendent where the Horace Mann charter school is to be located shall reassign, to the extent provided by the terms of its charter, any faculty member who wishes to be reassigned to another school located within the district.

(y) Employees of charter schools shall be considered public employees for purposes of tort liability under chapter 258 and for collective bargaining purposes under chapter 150E. The board of trustees shall be considered the public employer for purposes of tort liability under said chapter 258 and for collective bargaining purposes under said chapter 150E; provided, however, that in the case of a Horace Mann charter school, the school committee of the school district in which the Horace Mann charter school is located shall remain the employer for collective bargaining purposes under said chapter 150E. Teachers employed by a charter school shall be subject to the state teacher retirement system under chapter 32 and service in a charter school shall be creditable service within the meaning thereof.

A charter school shall recognize an employee organization designated by the authorization cards of 50 per cent of its employees in the appropriate bargaining unit as the exclusive representative of all the employees in such unit for the purpose of collective bargaining.

(z) Each local school district shall be required to grant a leave of absence to any teacher in the public schools system requesting such leave to teach in a commonwealth charter school. A teacher may request a leave of absence for up to 2 years.

At the end of the second year, the teacher may either return to his former teaching position or, if he chooses to continue teaching at the commonwealth charter school, resign from his school district position.

(aa) Notwithstanding section 59C, the internal form of governance of a charter school shall be determined by the school's charter.

(bb) A charter school shall comply with all applicable state and federal health and safety laws and regulations.

(cc) The students who reside in the school district in which the charter school is located shall be provided transportation to the charter school by the resident district's school committee on similar terms and conditions as transportation is provided to students attending local district schools if the transportation is requested by the charter school. In providing the transportation, the school committee shall accommodate the particular school

day and school year of the charter school; provided, however, that in the event that a school committee limits transportation for district school students, the school district shall not be required to provide transportation to any commonwealth charter school beyond the limitations. A charter school and the sending district shall meet to plan bus routes and charter school starting and ending times in order to assist the district with cost effective means of transportation. Schools operating under a charter granted after January 1, 1997, and all charter schools operating during fiscal year 1999 and thereafter, shall not receive funds for transportation above the amount actually required by such charter school for the provision of transportation services to eligible students. If the sending district provides an alternative method of transportation for students enrolled in the sending district's public schools, it shall not be assessed for transportation costs which exceed the per pupil cost of said alternative. Costs for transportation shall be included only if transportation is provided for students in the same program and grade level as those in the charter school. Students who do not reside in the district in which the charter school is located shall be eligible for transportation in accordance with section 12B of chapter 76. A regional charter school as designated by the board, and whose charter provides for transportation of all students from charter municipalities shall also be reimbursed by the commonwealth under section 16C of chapter 71 for transportation provided to pupils residing outside the municipality where the charter school is located, but no reimbursement for transportation between the charter school and home shall be made on account of any pupil who resides less than 1.5 miles from the charter school, measured by a commonly traveled route. If a charter school provides its own transportation, the school shall coordinate and collaborate with the sending district to provide cost effective means of transportation. All such transportation shall be determined in advance of the approval of the district's final budget for a fiscal year; provided, however, that a commonwealth charter school shall be required to determine such transportation in the first year of its operation as soon as practicable.

(dd) A charter granted by the board shall be for 5 years. The board shall develop procedures and guidelines for revocation and renewal of a school's charter; provided, however, that a charter for a Horace Mann charter school shall not be renewed by the board without a majority vote of the school committee and local collective bargaining unit in the district where said charter school is located; provided, however, that a commonwealth charter shall not be renewed unless the board of trustees of the charter school has documented in a manner approved by the board that said commonwealth charter school has provided models for replication and best practices to the commissioner and to other public schools in the district where the charter school is located.

When deciding on charter renewal, the board shall consider progress made in student academic achievement, whether the school has met its obligations and commitments under the charter, the extent to which the school has followed its recruitment and retention plan by using deliberate, specific strategies towards recruiting and retaining the categories of students enumerated in paragraph (3) of subsection (i) and the extent to which the school has enhanced its plan as necessary. The board may impose conditions on the charter school upon renewal if it fails to adhere to and enhance its recruitment and retention plan as required. When deciding on charter renewal, the board shall take into account the annual attrition of students. The board shall also consider innovations that have been successfully implemented by the charter school and the evidence that supports the effectiveness of these practices. Upon renewal of its charter, a school shall update and enhance its recruitment and retention plan as necessary to account for changes in enrollment.

(ee) The board may revoke a school's charter if the school has not fulfilled any conditions imposed by the board in connection with the grant of the charter or the school has violated any provision of its charter. The board may place conditions on a charter or may place a charter school on a probationary status to allow the implementation of a remedial plan after which, if said plan is unsuccessful, the charter may be summarily revoked.

(ff) Commonwealth charter schools shall be funded as follows: the commonwealth shall pay a tuition amount to the charter school, which shall be the sum of the tuition amounts calculated separately for each district sending students to the charter school. Tuition amounts for each sending district shall be calculated by the department using the formula set forth herein, to reflect, as much as practicable, the actual per pupil spending amount that would be expended in the district if the students attended the district schools. The tuition

amount shall be calculated separately for each district sending students to a charter school, and for each charter school to which a district sends students. Each district's per pupil tuition amount for each charter school to which it sends students shall include a per pupil foundation budget component, adjusted to reflect the actual net school spending in the sending district.

In calculating the per pupil foundation budget component, the department shall calculate a foundation budget for the students from each sending district attending the charter school in the previous fiscal year, pursuant to the provisions of section 2 of chapter 70; provided, that the department shall not include in said calculation the assumed tuitioned-out special education enrollment, nor any amounts generated by said assumed enrollment, as defined by said section 2. The per pupil foundation budget component shall be the district's foundation budget for the charter school, as so calculated, divided by the number of students attending the charter school from the sending district in the previous fiscal year. The per pupil foundation budget component shall be calculated separately for each charter school to which a district sends students. The foundation budget for a charter school shall be the sum of the foundation budgets for the charter school for each district sending students to the charter school.

In adjusting the per pupil foundation budget component, the department shall calculate for each sending district an above foundation spending percentage, which shall be the percentage by which the district's actual net school spending exceeds the foundation budget for the district, as calculated pursuant to the provisions of chapter 70. The department shall further calculate the percentage of actual net school spending reported by the sending district associated with tuition costs for tuitioned-out special education students, including education that occurs in educational collaboratives, and with spending on health care costs for retired employees, for any district for which such costs are included in net school spending, and shall reduce the district's above foundation spending percentage proportionately. The per pupil foundation budget component for each charter school to which the sending district sends students shall be increased by said adjusted above foundation spending percentage.

The total tuition amount owed by a sending district to a charter school shall be the per pupil tuition amount as defined above, multiplied by the total number of students attending the charter school from that district in the current fiscal year. The sending district's total charter school tuition amount for purposes of the following paragraphs shall be the sum of the district's tuition amounts for each charter school to which the district sends students, calculated using the provisions of this section. The receiving charter school's total charter school tuition amount shall be the sum of the tuition amounts calculated for the charter school for each district sending students to the charter school.

If a charter school student previously attended a private or parochial school or was home schooled, the commonwealth shall assume the first year cost for that student and shall not reduce the sending district's chapter 70 aid for that student's tuition in that fiscal year.

The state treasurer is hereby authorized and directed to deduct a district's total charter school tuition amount, as calculated herein, from the total state school aid, as defined in section 2 of said chapter 70, of the district in which the student resides prior to the distribution of said aid. In the case of a child residing in a municipality which belongs to a regional school district, the charter school tuition amount shall be deducted from said chapter 70 education aid of the school district appropriate to the grade level of the child. If, in a single district, the total of all such deductions exceeds the total of said education aid, this excess amount shall be deducted from other aid appropriated to the city or town. If, in a single district, the total of all such deductions exceeds the total state aid appropriated, the commonwealth shall appropriate this excess amount; provided, however, that if said district has exempted itself from the provisions of said chapter 70 by accepting section 14 of said chapter 70, the commonwealth shall assess said district for said excess amount.

The state treasurer is hereby further authorized and directed to disburse to the charter school an amount equal to the charter school's total charter school tuition amount as defined above.

If more than 1 charter school is managed by a single network or board of trustees, funding shall not be transferred among individual schools within the network unless such schools are located in the same school district.

The department shall, subject to appropriation, provide funding to charter schools for a portion of the per pupil capital needs component included in

the charter tuition amount and shall reimburse the sending school districts for said costs. In fiscal year 2011 and thereafter, such funding shall not be less than the per pupil amount provided in fiscal year 2010.

In the event of a charter school closing or eliminating grade levels as required by the board, the school district shall retain chapter 70 allotments for the students who attended those grade levels in the previous year.

(gg) Any district whose total charter school tuition amount is greater than its total charter school tuition amount for the previous year shall be reimbursed by the commonwealth in accordance with this paragraph and subject to appropriation; provided, however, that no funds for said reimbursements shall be deducted from funds distributed pursuant to chapter 70. The reimbursement amount shall be equal to 100 per cent of the increase in the year in which the increase occurs and 25 per cent in the second, third, fourth, fifth and sixth years following.

(hh) If the unencumbered amount of cumulative surplus revenue from tuition held by a charter school at the end of a fiscal year, less (i) the amount of the fourth quarter tuition payment, (ii) the amount held in reserve for the purchase or renovation of an academic facility pursuant to a capital plan, and (iii) any reserve funds held as security for bank loans, exceeds 20 per cent of its operating budget and its budgeted capital costs for the succeeding fiscal year as is reported in a capital plan to be submitted in the school's most recent annual report, the amount in excess of said 20 per cent shall be returned by the charter school to the sending district or districts and the state in proportion to their share of tuition paid during the fiscal year. At the end of each fiscal year, the commissioner shall certify the amounts described above and the amount, if any, by which it exceeds 20 per cent of the school's operating budget and its budgeted capital costs for the succeeding fiscal year, and shall report such amount to the school committee of the sending district or districts and the applicable board of selectmen or city council by December 1 of each year. A charter school shall annually make any payment required by this subsection no later than December 31.

(ii) No teacher shall be hired by a commonwealth charter school who is not certified pursuant to section 38G unless the teacher has successfully passed the state teacher test as required in said section 38G.

(jj) Each charter school shall submit an annual report, no later than August 1, to the board, the local school committee, each parent or guardian of its enrolled students and each parent or guardian contemplating enrollment in that charter school. The annual report shall be in such form as may be prescribed by the board and shall include, but not be limited to: (i) discussion of progress made toward the achievement of the goals set forth in the charter; and (ii) a financial statement setting forth by appropriate categories the revenue and expenditures for the year just ended and a balance sheet setting forth the charter school's assets, liabilities and fund balances or equities.

The department shall promulgate regulations creating a reporting requirement for a charter school's net asset balance at the end of the fiscal year; provided, however, that said regulations shall require, without limitation, the following: the revenue and expenditures for the year just ended with a specific accounting of the uses of public and private dollars; how the capital needs component of the charter school's tuition was spent; compensation and benefits for teachers, staff, administrators, executives, and board of trustees; the amount of any and all funds transferred to a management company; the sources of any surplus funds, specifically whether they are private or public; how any surplus funds were used in the previous fiscal year; and the planned use of any surplus funds in the upcoming fiscal year on in future fiscal years.

Each charter school shall keep an accurate account of all its activities and all its receipts and expenditures and shall annually cause an independent audit to be made of its accounts. Such audit shall be filed annually on or before January 1 with the department and the state auditor and shall be in a form prescribed by the state auditor. The state auditor may investigate the budget and finances of charter schools and their financial dealings, transactions and relationships, and shall have the power to examine the records of charter schools and to prescribe methods of accounting and the rendering of periodic reports.

(kk) The commissioner shall collect data on the racial, ethnic and socio-economic make-up of the student enrollment of each charter school in the commonwealth. The commissioner shall also collect data on the number of students enrolled in each charter school who have individual education

plans pursuant to chapter 71B and those requiring English language learners programs under chapter 71A. The commissioner shall file said data annually with the clerks of the house and senate and the joint committee on education not later than December 1.

(*ll*) Individuals or groups may complain to a charter school's board of trustees concerning any claimed violations of the provisions of this section by the school. If, after presenting their complaint to the trustees, the individuals or groups believe their complaint has not been adequately addressed, they may submit their complaint to the board which shall investigate such complaint and make a formal response.

(mm) The board shall promulgate regulations for implementation and enforcement of this section.

Added by St.1993, c. 71, § 55. Amended by St.1995, c. 38, § 102; St.1996, c. 72; St.1996, c. 151, §§ 223 to 225; St.1997, c. 46, § 2; St. 1997, c. 176, § 1; St.1998, c. 99, § 5; St.2000, c. 227, §§ 1 to 6; St.2002, c. 218, § 14; St.2004, c. 352, § 31, eff. Sept. 17, 2004; St.2010, c. 12, § 7, eff. Jan. 19, 2010; St.2010, c. 131, § 51, eff. July 1, 2010.

§ 90. Classroom placement of twins or higher order multiples

A parent or guardian of twins or higher order multiples may, if the children are in the same grade level at the same school request that the children be placed in the same classroom or in separate classrooms. The school may recommend classroom placement to the parents and provide professional education advice to the parents to assist in making the best decision for their children's education; provided, however, that the school shall provide the placement requested by the children's parent or guardian. The parent or guardian must request the classroom placement not later than 14 days after the first day of each school year or 14 days after the first day of attendance of the children during a school year.

For purposes of this section, "higher order multiples", shall mean triplets, quadruplets, quintuplets, or more.

Added by St.2008, c. 335, § 1, eff. on or before Aug. 1, 2009.

§ 91. Recovery High School; definition; enrollment; student performance; rules and regulations

(a) The term "Recovery High School" shall mean a public school or collaborative program for students diagnosed with substance use disorder or dependency, as defined by the Diagnostic and Statistical Manual of Mental Disorders IV–TR, that provides: (1) a comprehensive 4–year high school education, and (2) a structured plan of recovery.

(b) A school district shall transfer the state average foundation budget per pupil to a Recovery High School for a student meeting the following criteria: (1) the student is currently enrolled in the district or currently resides in the municipality in which the district is located; (2) the student is considered by a clinician, as defined by 105 CMR 164.006, to be clinically appropriate, using the criteria for Substance Use Disorders as defined in the Diagnostic and Statistical Manual of Mental Disorders IV–TR; and (3) the student meets all matriculation criteria as outlined by the sending district and the department of elementary and secondary education, with determination of academic eligibility based on existing documentation provided by the district. The district and the Recovery High School shall arrange to confer a diploma when a student completes state and district-mandated graduation requirements.

(c) A Recovery High School shall submit to the board of elementary and secondary education data considered necessary by the board to provide information regarding each student's academic performance. A Recovery High School shall also submit to the department of public health data regarding each student's recovery.

(d) The board of elementary and secondary education, in consultation with the department of public health and the department of mental health, shall promulgate rules and regulations, as necessary to implement this section.

Added by St.2009, c. 27, § 65, eff. July 1, 2009. Amended by St.2010, c. 131, § 52, eff. July 1, 2010.

§ 92. Innovation Schools

(a) An Innovation School shall be a public school, operating within a public school district, that is established for the purpose of improving school performance and student achievement through increased autonomy and flexibility. An Innovation School may be established as a new public school or as a conversion of an existing public school. A student who is enrolled in a school at the time it is established as an Innovation School shall retain the ability to remain enrolled in the school if the student chooses to do so.

(b) An Innovation School may establish an advisory board of trustees. An Innovation School shall have increased autonomy and flexibility in 1 or more of the following areas: (i) curriculum; (ii) budget; (iii) school schedule and calendar; (iv) staffing policies and procedures, including waivers from or modifications to, contracts or collective bargaining agreements; (v) school district policies and procedures; and (vi) professional development. An Innovation School shall receive each school year from the school committee the same per pupil allocation as any other district school receives. An Innovation School may retain any unused funds and use the funds in subsequent school years. An Innovation School may establish a non-profit organization that may, among other things, assist the school with fundraising. A district shall not reduce its funding to an Innovation School as a result of the school's fundraising activities.

(c) An Innovation School established under this section shall be authorized by the local school committee and shall operate according to an innovation plan, which shall articulate the areas of autonomy and flexibility under subsection (b). To the extent practicable, the innovation plan shall be based on student outcome data, including, but not limited to: (i) student achievement on the Massachusetts Comprehensive Assessment System; (ii) other measures of student achievement, approved by the commissioner, as appropriate; (iii) student promotion, graduation rates and dropout rates; (iv) achievement data for different subgroups of students, including low-income students as defined by chapter 70, limited English-proficient students and students receiving special education; and (v) student attendance, dismissal rates and exclusion rates.

An Innovation School shall operate in accordance with the law regulating other public schools, except as the law conflicts with this section or any innovation plans created thereunder.

(d) An Innovation School is a school in which: (i) faculty and leadership are primarily responsible for developing the innovation plan under which the school operates and leadership is responsible for meeting the terms of the innovation plan; or (ii) an external partner is primarily responsible for developing the innovation plan under which the school operates and the external partner is responsible for meeting the terms of the innovation plan.

(e) Nothing in this section shall be construed to prohibit: (i) the establishment of an Innovation School as an academy within an existing public school; (ii) the establishment of an Innovation School serving students from 2 or more school districts; provided, however, that all of the provisions of this section are met by each school district; (iii) the simultaneous establishment of 2 or more Innovation Schools as an Innovation Schools Zone within a school district; or (iv) the establishment of an Innovation School as a virtual public school that provides instruction to students through distance learning, including online learning programs and courses, subject to regulations adopted by the board of elementary and secondary education.

(f) The following shall be eligible applicants for the purposes of establishing an Innovation School: (i) parents; (ii) teachers; (iii) parent-teacher organizations; (iv) principals; (v) superintendents; (vi) school committees; (vii) teacher unions; (viii) colleges and universities; (ix) non-profit community-based organizations; (x) non-profit business or corporate entities; (xi) non-profit charter school operators; (xii) non-profit education management organizations; (xii) educational collaboratives; (xiv) consortia of these groups; and (xv) non-profit entities authorized by the commissioner. Private and parochial schools shall not be eligible to operate an Innovation School.

(g) The local school committee, local teacher's union and superintendent of the district shall follow a process, consistent with this subsection and subsections (h) to (*o*), inclusive, for which an existing district school may be converted to an Innovation School or by which a new Innovation School may be established within the district. This process shall require that an eligible applicant proposing to establish an Innovation School prepare a prospectus regarding the proposed school. The prospectus shall include, but not be limited to, a description of: (i) whether the school will be a new school or a conversion of an existing school; (ii) if the school is a new school, the proposed location of the school; (iii) if the school is a conversion of an existing school, the school that is being proposed for conversion; (iv) the external partners, if any, that will be involved in the school; (v) the number of students the school is anticipated to serve and the number of staff expected to be employed at the school; (vi) the overall vision for the school, including improving school performance and student achievement; (vii) specific needs or challenges the school shall be designed to address; (viii) a prelim-

inary assessment of the autonomy and flexibility under subsection (b) that the school will seek; (ix) why such flexibility is desirable to carry out the objectives of the school; (x) anticipated components of the school's innovation plan; (xi) a preliminary description of the process that shall be used to involve appropriate stakeholders in the development of the innovation plan; and (xii) a proposed timetable for development and establishment of the proposed school.

(h) Upon completion of the prospectus under subsection (g), an eligible applicant shall submit the prospectus to the superintendent, who shall within 30 days convene a screening committee consisting of the superintendent or a designee, a school committee member or a designee selected by the school committee and a representative from the leadership of the local teacher's union.

The screening committee shall review the prospectus for the purpose of determining whether the prospectus: (i) presents a sound and coherent plan for improving school performance and student achievement; (ii) supports or enhances existing educational efforts in the district; and (iii) reasonably can be expanded into a comprehensive innovation plan. In the case of a new school, the committee will prepare an impact statement describing how the new school will affect the children and faculty in the district. Within 30 days of receiving a prospectus, the screening committee shall decide, on the basis of a two-thirds vote, to accept or reject the prospectus, or return the prospectus to the eligible applicant for revisions. If a prospectus is rejected or returned, the screening committee shall submit a detailed explanation for the decision to the applicant. A prospectus that is rejected or returned may be revised and resubmitted for subsequent consideration.

(i) Upon the acceptance of a prospectus by the screening committee under subsection (h), the applicant shall form an innovation plan committee of not more than 11 individuals within 30 days. The purpose of the innovation plan committee shall be to: (i) develop the innovation plan described in subsection (c); (ii) assure that appropriate stakeholders are represented in the development of the proposed Innovation School; and (iii) provide meaningful opportunities for the stakeholders to contribute to the development of such school. The size and composition of the innovation plan committee shall be determined by the applicant; provided, however, that the committee shall include: (i) the applicant; (ii) the superintendent or a designee; (iii) a school committee member or a designee; (iv) a parent who has 1 or more children enrolled in the school, or in the case of a new school, from the district; (v) a principal employed by the district; and (vi) 2 teachers employed by the district. The applicant shall select the parent from among nominees submitted by parent-teacher organizations in the district. If the district does not contain a parent-teacher organization or if the organization does not submit nominees, the applicant shall select the parent from among volunteers in the area or community the proposed school is expected to serve. The applicant shall select the principal and 1 teacher from among volunteers in the district and 1 teacher from among nominees submitted by the local teacher's union.

(j) Upon the formation of the innovation plan committee in subsection (i), the committee shall develop the innovation plan for the proposed Innovation School. The purpose of the innovation plan shall be to comprehensively articulate the areas of autonomy and flexibility under subsection (b) that the proposed school will use. The innovation plan shall include, but not be limited to: (i) a curriculum plan, which shall include a detailed description of the curriculum and related programs for the proposed school and how the curriculum is expected to improve school performance and student achievement; (ii) a budget plan, which shall include a detailed description of how funds shall be used differently in the proposed school to support school performance and student achievement; (iii) a school schedule plan, which shall include a detailed description of the ways, if any, the program or calendar of the proposed school will be enhanced or expanded; (iv) a staffing plan, which shall include a detailed description of how the school principal, administrators, faculty and staff will be recruited, employed, evaluated and compensated in the proposed school and any proposed waivers or modifications of collective bargaining agreements; (v) a policy and procedures plan, which shall include a detailed description of the unique operational policies and procedures to be used by the proposed school and how the procedures shall support school performance and student achievement; and (vi) a professional development plan, which shall include a detailed description of how the school may provide high-quality professional development to its administrators, teachers and staff.

In order to assess the proposed school across multiple measures of school performance and stu-

dent success, the innovation plan shall include measurable annual goals including, but not limited to, the following: (i) student attendance; (ii) student safety and discipline; (iii) student promotion and graduation and dropout rates; (iv) student achievement on the Massachusetts Comprehensive Assessment System; (v) progress in areas of academic underperformance; and (vi) progress among subgroups of students, including low-income students as defined by chapter 70, limited English-proficient students and students receiving special education; (7) reduction of achievement gaps among different groups of students.

A majority vote of the innovation plan committee shall be required for approval of the innovation plan.

(k) The provisions of the collective bargaining agreements applicable to the administrators, teachers and staff in the school shall be considered to be in operation at an Innovation School, except to the extent the provisions are waived or modified under the innovation plan and such waivers or modifications are approved under subsections (*l*) and (m).

(*l*) In the case of a school conversion, upon completion of the innovation plan in subsection (j),,[1] the applicant shall submit the innovation plan to teachers in the school that is proposed for conversion for approval by secret ballot within 30 days. A two-thirds vote of the teachers shall be required to approve the plan. Upon approval of an innovation plan by the applicable union members the plan shall, within 7 days, be submitted to the school-committee.[2] If a two-thirds vote is not achieved, the innovation plan committee may revise the innovation plan as necessary and submit the revised plan to the teachers for a subsequent vote.

In the case of a new school, upon the completion of the innovation plan in subsection (j), the applicant, a local union and the superintendent shall negotiate waivers or modifications to the applicable collective bargaining agreement necessary for the school to implement the innovation plan. Upon the conclusion of the negotiations, the innovation plan shall be submitted immediately to the school committee. If the negotiations have not resulted in an agreement within 40 days, either party may petition the division of labor relations for the selection of an arbitrator. The division shall select an arbitrator within 3 days of the petition from a list submitted by the parties. The arbitrator shall conduct a hearing within 14 days of the arbitrator's selection. The arbitrator shall consider the parties' positions and the needs of the students in the district. The arbitrator's decision shall be consistent with the contents of the innovation plan developed by the applicant. The arbitrator shall, within 14 days of the close of the hearing, submit a decision which shall be final and binding on the parties.

(m) Upon receipt of an innovation plan regarding an Innovation School, a school committee shall hold at least 1 public hearing on the innovation plan. After the public hearing, but not later than 60 days after the receipt of the innovation plan, the school committee shall, on the basis of the quality of the plan and in consideration of comments submitted by the public, undertake a final vote to authorize the Innovation School for a period of not more than 5 years, subject to subsection (n). Approval of the majority of the school committee as fully constituted shall be required to authorize an Innovation School. If the approval is not obtained, an innovation plan committee may revise the innovation plan and: (i) in the case of a new school, submit the revised plan to the school committee for a subsequent vote; or (ii) in the case of a conversion, submit the revised plan to the teachers in the school that is proposed for conversion for a vote, pursuant to subsection (*l*); provided, however, that the plan meets the requirements for approval under subsection (*l*), submit the revised plan to the school committee for a subsequent vote. A school committee shall vote on a revised plan submitted pursuant to this subsection within 60 days of the receipt of such plan and contract.

(n) All Innovation Schools authorized under subsection (m) shall be evaluated by the superintendent at least annually. The superintendent shall transmit the evaluation to the school committee and the commissioner of elementary and secondary education. The purpose of the evaluation shall be to determine whether the school has met the annual goals in its innovation plan and assess the implementation of the innovation plan at the school. If the school committee determines, on the advice of the superintendent, that the school has not met 1 or more goals in the innovation plan and that the failure to meet the goals may be corrected through reasonable modification of the plan, the school committee may amend the innovation plan as necessary. After the superintendent assesses the implementation of the innovation plan at the school, the school committee may, on the advice of the superintendent, amend the plan if the school committee determines that the amendment is necessary

in view of subsequent changes in the district that affect 1 or more components of the plan, including, but not limited to, changes to contracts, collective bargaining agreements or school district policies; provided, however, that an amendment involving a subsequent change to a teacher contract shall first be approved by teachers at the school under the procedures in subsection (*l*).

If the school committee determines, on the advice of the superintendent, that the school has substantially failed to meet multiple goals in the innovation plan, the school committee may: (i) limit 1 or more components of the innovation plan; (ii) suspend 1 or more components of the innovation plan; or (iii) terminate the authorization of the school; provided, however, that the limitation or suspension shall not take place before the completion of the second full year of the operation of the school and the termination shall not take place before the completion of the third full year of the operation of the school.

(*o*) At the end of the period of authorization of an Innovation School approved under subsection (m), the leadership of the school may petition the school committee to extend the authorization of the school for an additional period of not more than 5 years. Before submitting the petition, the leadership of the school shall convene a selection of school stakeholders, including, but not limited to, administrators, teachers, other school staff, parents and external partners, as applicable, to discuss whether the innovation plan at the school requires revision and to solicit recommendations as to the potential revisions. After considering the recommendations of the stakeholder group, the leadership of the school and the applicable superintendent shall jointly update the innovation plan as necessary; provided, however, that a proposal regarding a new waiver or exemption from the local teacher's union contract shall be approved by teachers at the school, under subsection (*l*). Approval of the majority of the school committee as fully constituted shall be required to extend the period of authorization of an Innovation School. If the approval is not obtained, the leadership of the school and superintendent may jointly revise the innovation plan and submit the revised plan to the school committee for a subsequent vote. If the school committee does not extend the authorization of the school, the leadership of the school may seek the authorization from the board of elementary and secondary education. The board shall vote on the requested extension within 60 days of its receipt for approval of such extension.

(p) The commissioner of elementary and secondary education shall, to the extent practicable, be responsible for the following: (i) the provision of planning and implementation grants to eligible applicants to establish Innovation Schools; (ii) provision of technical assistance and support to eligible applicants; (iii) the collection and publication of data and research related to the Innovation Schools initiative; (iv) the collection and publication of data and research related to successful programs serving limited English-proficient students attending Innovation Schools; and (v) the collection and dissemination of best practices in Innovation Schools that may be adopted by other public schools. The board of elementary and secondary education shall promulgate regulations necessary to carry out this section. Annually, the commissioner shall report to the joint committee on education, the house and senate committees on ways and means, the speaker of the house of representatives and the senate president on the implementation and fiscal impact of this section.

Added by St.2010, c. 12, § 8, eff. Jan. 19, 2010.

1 So in original.

2 So in original.

§ 93. Policy regarding internet safety measures for schools providing computer access to students

Every public school providing computer access to students shall have a policy regarding internet safety measures to protect students from inappropriate subject matter and materials that can be accessed via the internet and shall notify the parents or guardians of all students attending the school of the policy. The policy and any standards and rules enforcing the policy shall be prescribed by the school committee in conjunction with the superintendent or the board of trustees of a commonwealth charter school.

Added by St.2010, c. 92, § 6, eff. May 3, 2010.

CHAPTER 71B

CHILDREN WITH SPECIAL NEEDS

Chapter 71B of the General Laws was added by St.1972, c. 766, § 11.

Selected section

Section

5A. Special education reimbursement program.

The section headings for the General Laws in this pamphlet have been editorially supplied

§ 5A. Special education reimbursement program

(a) There is hereby established, subject to appropriation, a special education reimbursement program. Said program shall reimburse municipalities for the eligible instructional costs associated with implementing individual education plans, so-called, of students receiving special education services pursuant to this chapter. Said reimbursements shall be in addition to amounts distributed pursuant to chapter 70 and shall not be included in the calculation of base aid, as defined in said chapter 70, for any subsequent fiscal year. Said reimbursement shall not include costs incurred by municipalities for transportation. Charter schools shall receive reimbursements under this section in the same manner as districts. The department shall define, consistent with this section and in regulations it shall promulgate, those instructional costs associated with implementing individual education plans for pupils that shall be eligible for reimbursement under said program.

(b) For the purposes of this section, the following words shall have the following meanings:—

"Instructional costs", shall include only those costs directly attributable to providing the special education services on the student's individual education plan, such as salary of educational personnel, salary of related services personnel, costs for specialized books, materials, or equipment, tuition costs, if the student is receiving services from other than the local public school, consultant costs if directly attributable to the student's instructional program, and instructional costs of extended day or year services if such services are a part of the individual education plan. Such costs shall be prorated as appropriate to reflect group activities or costs for part time services. Instructional costs shall not include transportation costs, administrative or overhead costs, the costs of adapting classrooms or materials that are used by more than one student, the costs of fringe benefits of personnel employed by the school district, nor the costs associated with evaluation, development of the individual education plan, or service coordination for the student with disabilities. Instructional costs for the purposes of this reimbursement program also shall not include the salary of personnel providing educational services when such services are not specially designed instruction for the student with disabilities.

(c) Instructional costs eligible for reimbursement under the program shall be reported by a school district to the department in a form and manner as prescribed by the commissioner. For each such school district, the department shall review the report and approve those per pupil instructional costs that are eligible for reimbursement pursuant to the program within 30 days of submission. Based upon the approved costs, the department shall calculate the reimbursement due a municipality. The costs of programs shall be reimbursed at 75 per cent of all the approved costs that exceed 4 times the state average per pupil foundation budget, as defined in said chapter 70, for the previous fiscal year.

Notwithstanding the foregoing, the reimbursement rate for students who have no father, mother, or guardian living in the commonwealth, and for any school age child placed in a school district other than a home town by, or under the auspices of, the department of transitional assistance or the department of children and families, shall be 100 per cent of all the approved costs that exceed 4 times the state average per pupil foundation budget.

(d) Districts shall notify the department within 30 days of any change in previously approved instructional costs, including but not limited to changes in a student's enrollment status or individual educational plan.

(e) In preparing a budget recommendation for the subsequent fiscal year for consideration by the local appropriating authority, a school district shall project special education costs and enrollments, including per pupil instructional costs eligible for reimbursement under this program. The school committee's budget recommendation shall exclude any such instructional costs eligible for reimbursement under this program. Upon receipt of reimbursements paid under this program by the municipal treasurer, in the case of local school districts, or the regional district treasurer in the case of regional school districts, such amounts shall be recorded by the municipality or district as additional appropriations to the school committee, without any further action being required on the part of the local appropriating authority.

(f) Reimbursements shall be made based on the previous year's per pupil instructional costs, as pursuant to subsection (c), in compliance with department of education audits and procedures. Reimbursements shall be made in 4 quarterly payments to coincide with the distribution of funds made available pursuant to said chapter 70. Each quarterly payment shall be equal to 25 per cent of the estimated reimbursements for the previous year's submissions, subject to appropriation.

(g) Notwithstanding the foregoing, the commonwealth shall continue to pay to approved private residential schools sums authorized by this section on a direct payment basis at the request of a district and the private residential school to which that district sends a student whose tuition is partly reimbursable pursuant to this section.

Added by St.1981, c. 351, § 124. Amended by St.1998, c. 161, § 307; St.2000, c. 159, § 171; St.2003, c. 26, §§ 215 to 217, eff. July 1, 2003; St.2004, c. 149, §§ 128, 129, eff. July 1, 2004; St.2004, c. 352, § 32, eff. July 1, 2005; St.2008, c. 176, § 67, eff. July 8, 2008.

CHAPTER 73

STATE COLLEGES AND COMMUNITY COLLEGES

Selected section

Section
20. University education for police officers and firefighters.

The section headings for the General Laws in this pamphlet have been editorially supplied

§ 20. University education for police officers and firefighters

A state university shall admit as a candidate for a four year degree any person who is a regular member of the police department or fire department of a city or town of the commonwealth within commuting distance of the university, who is recommended by his superior officers and demonstrates sufficient capacity in a competitive admissions examination. A police officer or firefighter who is so admitted shall, while enrolled as a student in good standing at such university, have his tuition paid by the commonwealth. While so enrolled, the city or town by whom he is employed shall pay him his full weekly salary during the thirty-two weeks of each university year; provided, he is enrolled for sixteen semester hours of instruction, works twenty-four hours a week on regular duty as a police officer or firefighter, as the case may be, in said city or town and during university vacation period works his regular weekly tour of duty in his department. Each police officer and firefighter who enrolls at a state university under the provisions of this section shall sign an agreement that he shall remain in full time employment as a police officer or firefighter, as the case may be, in such city or town after he completes such university work for as many years as he has been aided by such city or town under this section.

Added by St.1970, c. 834. Amended by St.1972, c. 550; St.2010, c. 189, §§ 71, 72, eff. Oct. 26, 2010.

CHAPTER 74

VOCATIONAL EDUCATION

Selected section

Section

14B. Culinary arts; revolving fund.

The section headings for the General Laws in this pamphlet have been editorially supplied

§ 14B. Culinary arts; revolving fund

In any city or town which accepts the provisions of this section, any income received in a fiscal year not exceeding, in the aggregate, fifteen thousand dollars derived from the purchase and sale of products produced in the culinary arts subject area of the home economics program, or any other vocational-technical program conducted in any public vocational-technical high school shall be deposited in a special fund by the school committee in any banking institution in the commonwealth. Expenditures may be made from said fund by the school committee for purposes needed for the culinary arts subject area or in the case of a fund established for any other program, such funds may be expended for the purposes of such program area without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four; provided, however, that said special funds shall not be used to pay the salary of any employee, and in any fiscal year no more than five thousand dollars from said funds shall be used in the purchase of equipment. Three years from the year a city or town accepts the provisions of this section, and every third year thereafter, said city or town may act to rescind its original acceptance. The superintendent of a school district with such a fund shall submit annually a report of said fund to the mayor, city council, city manager, board of selectmen or town manager of each city and town in said district and a copy of said report shall be submitted to the director of the bureau of accounts. The provisions of this section shall be effective in any regional school district upon its acceptance by the school committee of said district and a majority of the towns and cities and said district by vote of the board of selectmen or city council of said cities and towns.

Added by St.1978, c. 546. Amended by St.1987, c. 731, § 3.

CHAPTER 76

SCHOOL ATTENDANCE

Selected section

Section
12B. Definitions; attendance of school other than in city or town of residence of child; reports; tuition; parent information system; transportation reimbursement program; funding.

The section headings for the General Laws in this pamphlet have been editorially supplied

§ 12B. Definitions; attendance of school other than in city or town of residence of child; reports; tuition; parent information system; transportation reimbursement program; funding

(a) As used in this section, the following terms shall have the following meanings:

"Above foundation reimbursement amount", (i) for fiscal year nineteen hundred and ninety-four, fifty percent of the net losses due to the provisions of this section; provided, however, that if the amount lost by said district pursuant to subsection (f) is greater than two percent of the total school budget of said district, the amount of said reimbursement shall be equal to seventy-five percent of the net losses due to the provisions of this section; (ii) beginning in fiscal year nineteen hundred and ninety-five, twenty-five percent of the net losses due to the provisions of this section.

"Receiving district", any city, town or regional school district within the commonwealth in which a child does not reside, but in which that child attends public school under the provisions of this section.

"Sending district", any city, town or regional school district within the commonwealth in which a child resides, but in which that child does not attend public school under the provisions of this section.

"State school choice limit", in fiscal year nineteen hundred and ninety-four, one percent of the total number of students attending public schools in the commonwealth; in fiscal year nineteen hundred and ninety-five, one and one-half percent of the total number of students attending public schools in the commonwealth; in fiscal year nineteen hundred and ninety-six, one and three-quarters percent of the total number of students attending public schools in the commonwealth; in fiscal year nineteen hundred and ninety-seven and thereafter, two percent of the total number of students attending public schools in the commonwealth; provided, however, that students enrolled under the program for the elimination of racial imbalance as provided in section twelve A shall not be counted toward these limits.

(b) Notwithstanding the provisions of section twelve, or any other special or general law to the contrary, any child may attend a public school, in a city or town where he does not reside; provided, however, that the receiving district shall be paid by the commonwealth a tuition rate as established in subsection (f).

(c) Not later than May first of every year, the school committee of each city, town or regional school district shall submit a report to the department stating:

(1) The capacity of each school in said city, town or regional school district for the following academic year.

(2) The number of students expected to attend each school in said city, town or regional school district in the following academic year.

(3) The number of students attending said school district under the terms of this section in the prior school year and the number of those students who are expected no longer to be attending said school district in the next school year.

(4) The number of additional seats therefore available to non-resident students reduced by the number of students enrolled under the program for the elimination of racial imbalance as provided in section twelve A, in said charter school or each school in said city, town or regional school district. The board may require every district to update this report in whatever manner is required to effectuate the objectives of this section.

(d) Each city, town or regional school district shall enroll non-resident students at the school of such non-resident student's choice; provided, however, that such receiving district has seats available

as stated in said report; provided, however, that this obligation to enroll non-resident students shall not apply to a district for a school year in which its school committee, prior to June first, after a public hearing, adopts a resolution withdrawing from said obligation, for the school year beginning the following September. Any such resolution of a school committee shall state the reasons therefor, and such resolution with said reasons shall be filed with the department of education; provided, however, that said department shall have no power to review any such decision by a school committee. If the city, town or regional school district operates an intra-district choice plan, non-resident students may apply for schools on the same basis as resident students, but the intra-district choice plan may give preference to resident students in assigning students to schools.

(e) Not later than the first day of July, each city, town or regional school district shall each year submit a non-resident attendance report to the board and to the state treasurer, certifying the number of non-resident applicants for each available seat in each school, the disposition of their applications, how many of said applicants will be attending the district in the next school year, the identity of the sending districts for those students, the annual amount of tuition for each such child and the total tuition owed to the district based on full or partial attendance, itemized by the amount attributable to each city or town of residence. The board may review said certification to determine that the amount of the individual tuition charged for each child is in accordance with the provisions of this section and shall inform the state treasurer of any errors. The department may also, on a post-audit basis, verify the admission and attendance of the number of children certified by each school district. In addition to the foregoing, all said districts shall, on October first and April first, report to the board and certify to the state treasurer accurate and up to date reports of all the information required in the non-resident attendance report. If the total number of students admitted to receiving districts pursuant to this section is greater than the state school choice limit, the board shall notify all districts that no more students may be accepted pursuant to this section.

(f) For each student enrolling in a receiving district, there shall be a school choice tuition amount. Said tuition amount shall be equal to seventy-five percent of the actual per pupil spending amount in the receiving district for such education as is required by such non-resident student, but not more than five thousand dollars; provided, however, that for special education students whose tuition amount shall remain the expense per student for such type of education as is required by such non-resident student. The state treasurer is hereby authorized and directed to deduct said school choice tuition amount from the total education aid, as defined in chapter seventy, of said student's sending district, prior to the distribution of said aid and to deposit said aid in the School Choice Tuition Trust Fund established by section twelve C. In the case of a child residing in a municipality which belongs to a regional school district, the school choice tuition amount shall be deducted from said chapter seventy education aid of the school district appropriate to the grade level of the child. If, in a single district, the total of all such deductions exceeds the total of said education aid, this excess amount shall be deducted from other aid appropriated to the city or town. If, in a single district, the total of all such deductions exceeds the total state aid appropriated, the commonwealth shall appropriate this excess amount; provided, however, that if said district has exempted itself from the provisions of chapter seventy by accepting section fourteen of said chapter, the commonwealth shall assess said district for said excess amount.

(g) The state treasurer is further directed to disburse to the receiving district, from the School Choice Tuition Trust Fund established by section twelve C, an amount equal to each student's school choice tuition as defined in subsection (f); provided, however, that each public school district which admits children under the provisions of this section shall certify to the state treasurer the number of such children attending its public schools, the city or town of residence of each such child, the annual amount of tuition for each such child and the total tuition owed to the district based on full or partial attendance, itemized by the amount attributable to each city or town of residence; and, provided further, that such certification shall be made on October first of each year and April first of each year. Each school district submitting a certification to the state treasurer shall also submit a copy of said certification to the department of education. Said department may review said certification to determine that the amount of the individual tuition charged for each child is in accordance with the provisions of this section and shall inform the state treasurer of any errors. The department may also, on a post-audit basis, verify the admission and

attendance of the number of children certified by each school district.

(h) There shall be a parent information system established, maintained and developed by the board of education to disseminate to parents detailed and comparable information about each school system participating in the school choice program, so-called, which shall include, but not be limited to, information on special programs offered by the school, philosophy of the school, number of spaces available, transportation plans, class sizes, teacher/student ratios, and data and information on school performance that indicate its quality. Said information shall include the school profiles, so-called, developed pursuant to section one B of chapter sixty-nine. The board may include information regarding regional choice initiatives as deemed appropriate. The system shall have as its primary goal to ensure that all parents have an equal opportunity to participate in the program of interdistrict choice. The board of education, when disseminating this information shall encourage the parent and student to make at least one visit to the school of choice as part of the application procedure.

(i) Subject to appropriation, the board of education shall develop and administer a school choice transportation reimbursement program for the purpose of providing reimbursement for the transportation of pupils enrolled under the provisions of this section. Pupils eligible for said reimbursement must be eligible to receive free or reduced cost lunches under eligibility guidelines promulgated by the federal government under 42 USC section 1758. The board may limit said reimbursement to a yearly amount. The types of transportation to be reimbursed pursuant to said program shall include, but need not be limited to, the following: (1) transportation by school buses provided by the sending or receiving district; (2) transportation provided by the parent or guardian of the child; (3) transportation provided by public transportation. All eligible pupils who attend a school district contiguous to the school district of residence of such pupil shall be eligible for said reimbursement. If cost-effective transportation alternatives exist for pupils who attend districts not contiguous to the school districts of residence of such pupil, the board may provide a transportation reimbursement. Said reimbursements may be paid to the district in which the pupil is enrolled, the district of residence of the student, or the parent, guardian or person acting as guardian of the student; provided, however, that said district or parent provide documentation of the transportation expenditure. The board of education shall promulgate regulations for the program to be placed on file with the joint committee on education, arts and humanities of the general court. The board of education shall disseminate information to parents and school systems detailing the availability of said transportation reimbursements. A full description of said school choice transportation reimbursement program shall be submitted to the house and senate committees on ways and means and shall not become effective until ninety days after said submission. Notwithstanding the second paragraph of section one, nothing in this section shall confer upon any student attending a private school any right to transportation or reimbursement therefor.

(j) School committees may establish terms for accepting non-resident students; provided, however, that if the number of non-resident students applying for acceptance to said district exceeds the number of available seats, said school committee shall select students for admission on a random basis; provided, further, that said school committee shall conduct said random selection twice: one time prior to July first and one time prior to November first; provided, further, that no school committee shall discriminate in the admission of any child on the basis of race, color, religious creed, national origin, sex, age, sexual orientation, ancestry, athletic performance, physical handicap, special need or academic performance or proficiency in the English language. The Massachusetts commission against discrimination, established by section fifty-six of chapter six, shall have jurisdiction to enforce the provisions of this section; provided, however, that all students described in subsection (m) shall be entitled to remain in the receiving districts they are attending or have been accepted to attend. Any school committee that accepts non-resident students under the provisions of this section shall notify each district from which it has accepted a non-resident student of its acceptance of that student; provided, however, that a school committee may not publicly release the names of students leaving or entering a district under the provisions of this section. Notwithstanding the preceding provisions of this paragraph, any sibling of a student already enrolled in the receiving district shall receive priority for admission to said district.

(k) Any child accepted to attend a public school in a community other than the one in which he

resides pursuant to this section shall be permitted to remain in that school system until his high school graduation, unless there is a lack of funding of the program as authorized by said sections.

(*l*) Notwithstanding the provisions of this section or any general or special law to the contrary, any school district which admitted children on a private tuition basis prior to June thirtieth, nineteen hundred and ninety-one may continue, on that basis, to admit any child who attended its school system prior to that date, as well as any sibling or step-sibling of such child and any foster child residing in the home of such child.

(m) Any student who, pursuant to the provisions of this section, has been attending or has been admitted to attend a public school of a city or town in which he does not reside and for whom the commonwealth has been paying tuition or, in the case of a student recently admitted, would be required to pay tuition in the coming year, shall be deemed to be a student admitted pursuant to paragraph (j), and shall be subject to all of the provisions of this section; provided, however, that said students shall be allowed to remain in said school notwithstanding any determination of capacity or decision by the receiving district to withdraw made pursuant to this section.

(n) Subject to appropriation, any sending district for which the provisions of subsection (f) result in a reduction in state aid shall be eligible to apply for a school choice reimbursement from the commonwealth. If net school spending in a sending district is greater than said foundation budget as defined in chapter seventy, the amount of said reimbursement shall be the above foundation reimbursement amount for that fiscal year. If net school spending in a sending district is less than said foundation budget, the amount of said reimbursement shall be equal to one hundred percent of the positive difference, if any, between (i) the amount transferred pursuant to subsection (f), and (ii) the product of the number of students leaving the sending district and the average per pupil expenditure in the sending district for such education as is required by such nonresident student, for the period the child shall attend; provided, however, that if any district has exempted itself from the provisions of said chapter seventy by accepting section fourteen of said chapter seventy, the district shall be ineligible for a reimbursement under this subsection; provided, further, that if any district in which net school spending is greater than the foundation budget becomes a sending district for the first time in fiscal year nineteen hundred and ninety-five or any year thereafter, the reimbursement amount for that district in the first year that it is a sending district shall be the fiscal year nineteen hundred and ninety-four reimbursement amount; the reimbursement amount for the district in its second year as a sending district shall be the fiscal year nineteen hundred and ninety-five reimbursement amount. Said reimbursement application shall be submitted to the department of education on or before October first of each year together with an educational corrective action plan containing information, recommendations and suggestions relative to: (1) areas needing improvement within the school system of the applicant; (2) methods of improvement to be employed; (3) goals and objectives of said improvement; (4) evaluation and control methods to be used; (5) personnel to be engaged in such improvement; (6) results intended to be accomplished within one year from the date of application; and (7) methods of increasing parental involvement to be employed; provided, however, that any community or regional school district that has a previously approved plan need not refile said plan; and, provided further, that approval of said plan by said board shall act as a condition precedent to the distribution of said reimbursement to the applicant community or regional school district. Under no circumstances shall the total amount expended pursuant to subsections (h) and (i) and to reimburse sending districts pursuant to this paragraph, be greater than twenty million dollars. If, in any year, the total amount that would be required to reimburse said cities at said rates would be greater than twenty million dollars, then the reimbursement rates shall be reduced proportionately to those rates at which the total cost does not exceed twenty million dollars.

(*o*) The commonwealth and the school committee of any town may accept funds from the federal government for the purposes of this section. Any amounts received by the school committee of any town from the federal government, from the commonwealth or from a charitable foundation or private institution shall be deposited with the treasurer of such town and held as a separate account, and may be expended by said school committee without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four. Whenever such funds are received after the submission of the annual school budget, all or any portion thereof may be expended by the school

committee without further appropriation, but shall be accounted for in the next annual school budget.

If the student attends the public schools of another town and it is anticipated that the student shall need the services of a private day or residential school, an individual education plan team meeting shall be convened by the school district in which the child is attending school. The school district in which the student attends school shall notify the school district where the student resides of the team meeting at least five school days prior to the meeting. Personnel from the district in which the child resides shall be allowed to participate in the team meeting concerning future placement of the child.

Added by St.1966, c. 506. Amended by St.1968, c. 622, § 2; St.1968, c. 735; St.1991, c. 6, § 23; St.1993, c. 71, § 61; St.1993, c. 151, §§ 39 to 41; St.1994, c. 60, §§ 97 to 99; St.1995, c. 38, § 108; St.2000, c. 159, § 192.

CHAPTER 78

LIBRARIES

Selected sections

Section

8. Use of facilities by non-residents.
10. Town libraries; selection of trustees and officers.

The section headings for the General Laws in this pamphlet have been editorially supplied

§ 8. Use of facilities by non-residents

Any free town public library may loan its books or other library material to any other such library or to citizens of other towns or non-residents, under such written conditions and regulations as may be made by the board of trustees or other authority having control of the library so loaning. Any town may raise money to pay the expenses of so borrowing books and other library material from the library of any other town.

Historical and Statutory Notes

St.1911, c. 140.
St.1914, c. 118.

§ 10. Town libraries; selection of trustees and officers

A town which raises or appropriates money for the support of a free public library, or free public library and reading room, owned by the town, shall, unless the same has been acquired entirely or in part through some gift or bequest which contains other conditions or provisions for the election of its trustees, or for its care and management, which have been accepted by the town, elect by ballot at a meeting a board of trustees consisting of any number of persons, male or female, divisible by three, which the town determines to elect. When such board is first chosen, one third thereof shall be elected for one year, one third for two years and one third for three years, and thereafter one third shall be elected annually for a term of three years. The board shall, from its own number, annually choose a chairman and secretary and, if the town so votes, a treasurer, who shall give a bond similar to that given by the town treasurer, in an amount and with sureties to the satisfaction of the selectmen. Until the town otherwise directs the town treasurer shall act as treasurer of the board of trustees.

Historical and Statutory Notes

St.1888, c. 304, §§ 1, 2, 5.
St.1889, c. 112.
R.L.1902, c. 38, § 7.

CHAPTER 79

EMINENT DOMAIN

Selected sections

Section

12. Measure of damages; federal reimbursement.
44A. Tax liens on realty taken.

The section headings for the General Laws in this pamphlet have been editorially supplied

§ 12. Measure of damages; federal reimbursement

The damages for property taken under this chapter shall be fixed at the value thereof before the recording of the order of taking, and in case only part of a parcel of land is taken there shall be included damages for all injury to the part not taken caused by the taking or by the public improvement for which the taking is made; and there shall be deducted the benefit accruing to the part not taken unless it was stated in the order of taking that betterments were to be assessed. In determining the damages to a parcel of land injured when no part of it has been taken, regard shall be had only to such injury as is special and peculiar to such parcel, and there shall be deducted the benefit accruing to such parcel, unless it was stated in the order of taking, or if there was no taking in the order for the establishment, construction, alteration, repair or discontinuance of the public improvement which caused the injury, that betterments were to be assessed. Whenever the title or interest taken is such that the property will be exempt from taxation so long as it is held and used for the purpose for which it is taken, the damages for the taking shall include an amount or amounts separately determined and stated which shall be estimated to be equal to that portion of the tax assessed upon the property for the fiscal year in which it is taken which, if the tax were apportioned pro rata according to the number of days in such fiscal year, would be allocable to the days ensuing after the taking, and an additional amount equal to the tax assessed against the property for the ensuing fiscal year, if the taking is made between January first and June thirtieth inclusive. Notwithstanding the other provisions of this section, in a program eligible for federal financial assistance, whenever the federal government authorizes a federal agency to allow a measure of damage, or other standard for payments to owners of property taken which would increase the payments to said owners over the measure of damages set forth hereunder, then in such cases the measure of damages shall be the measure of damages set forth hereunder plus any such increase, provided that the taking agency will receive partial or full reimbursement from the federal government for such increase.

Amended by St.1953, c. 634, § 1; St.1959, c. 626, § 4; St.1968, c. 759, § 5; St.1975, c. 522, § 1; St.1977, c. 832, § 1; St.1978, c. 411, § 1.

Historical and Statutory Notes

R.S.1836, c. 24, § 31.
St.1842, c. 86, § 2.
G.S.1860, c. 43, § 16.
St.1866, c. 174, § 2.
St.1868, c. 75.
St.1871, c. 382, § 3.
P.S.1882, c. 49, § 16; c. 51, § 3.
St.1895, c. 488, § 13.
R.L.1902, c. 48, § 15; c. 50, § 3.
St.1917, c. 344, pt. 2, § 16, pt. 3, § 3.
St.1918, c. 257, § 187, subs. 12.
St.1919, c. 5.
St.1920, c. 2.

§ 44A. Tax liens on realty taken

If real estate taken in whole or in part by eminent domain was at the time of said taking subject to any lien for taxes, assessments or other charges, which is extinguished by such taking, and if the collector of taxes of the town in which such real estate is located gives written notice of a claim of the amount covered by such lien to the body politic or corporate, on behalf of which such taking was made, prior to the payment of any award of damages for such taking or to the entry of judgment therefor, said collector shall be entitled to be paid such amount before any payment of damages for such taking is made to any other party; and any amount so payable on account of such taxes, assessments or other charges shall be deducted from the amount of such damages otherwise payable.

Added by St.1935, c. 189. Amended by St.1936, c. 137.

CHAPTER 80

BETTERMENTS

Section
1. Assessment of cost of public improvements.
2. Assessment order; plan and estimate; recordation.
3. Surrender of land assessed.
4. Collection.
5. Petition for abatement; filing, etc.
6. Filing petition; time limitation; extension.
7. Appeal to superior court.
8. Death of person entitled to petition for abatement.
9. Trial procedure.
10. Appeal to county commissioners.
10A. Petition for abatement; procedure on failure of board to act.
11. Contribution by lessee; rights and remedies of lessee.
12. Lien status of assessment; duration of lien.
13. Apportionment and reapportionment.
13A. Land devoid of structures; extension of time for payment of assessments.
13B. Deferral and recovery agreements; application; recordation; lien.
14. Repealed.
15. Division of assessed land.
16. Reassessment.
17. Application of chapter.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Assessment of cost of public improvements

Whenever a limited and determinable area receives benefit or advantage, other than the general advantage to the community, from a public improvement made by or in accordance with the formal vote or order of a board of officers of the commonwealth or of a county, city, town or district, and such order states that betterments are to be assessed for the improvement, such board shall within six months after the completion of the improvement determine the value of such benefit or advantage to the land within such area and assess upon each parcel thereof a proportionate share of the cost of such improvement, and shall include in such cost all damages awarded therefor under chapter seventy-nine; but no such assessment shall exceed the amount of such adjudged benefit or advantage. The board shall in the order of assessment designate as the owner of each parcel the person who was liable to assessment therefor on the preceding January first under the provisions of chapter fifty-nine.

Amended by St.1933, c. 254, § 62.

Historical and Statutory Notes

St.1866, c. 174, §§ 1, 5.
St.1868, c. 75.
St.1869, c. 169, §§ 1, 3 to 5.
St.1869, c. 367, § 1.
St.1871, c. 217, § 1.
St.1871, c. 382, §§ 1, 3.
P.S.1882, c. 51, §§ 1, 3.
St.1882, c. 154, § 7.
St.1887, c. 124, §§ 1, 2.
St.1895, c. 305, § 5.
St.1895, c. 450, § 4.
R.L.1902, c. 50, §§ 1, 3, 19 to 21.
St.1917, c. 344, pt. 3, §§ 1, 3, 20 to 22.
St.1918, c. 257, § 219, subs. 1.
St.1919, c. 5.
St.1919, c. 333, § 4.
St.1920, c. 2.
St.1923, c. 377, § 1.

§ 2. Assessment order; plan and estimate; recordation

An order under section one which states that betterments are to be assessed for the improvement shall contain a description sufficiently accurate for identification of the area which it is expected will receive benefit or advantage, other than the general advantage to the community, from such improvement, and shall refer to a plan of such area, and shall contain an estimate of the betterments that will be assessed upon each parcel of land within such area; and such order, plan and estimate shall be recorded, within ninety days from the adoption of the order, or from the acceptance by a town of the laying out, relocation or alteration of a way in case such acceptance is required before the establishment thereof, in the registry of deeds of every county or district in which the benefited area is situated. No betterments shall be assessed for such improvement unless the order, plan and estimate are recorded as herein provided, nor upon any parcel of land not within such area, nor for a greater amount than such estimate.

Amended by St.1962, c. 234.

Historical and Statutory Notes

St.1880, c. 187, §§ 1 to 3.
P.S.1882, c. 51, §§ 11 to 13.
St.1885, c. 299.
R.L.1902, c. 50, §§ 23 to 25.
St.1917, c. 344, pt. 3, §§ 24 to 26.
St.1918, c. 257, § 219, subs. 2.
St.1919, c. 5.
St.1920, c. 2.
St.1928, c. 120.

§ 3. Surrender of land assessed

An owner of land abutting on a public improvement and liable to assessment therefor under this chapter may give notice in writing to the board, within three months after the award of damages is made, that he elects to surrender his land; and if said board adjudge that the public convenience and necessity require the taking of such abutting estate for the improvement named, they may take the whole thereof, and shall thereupon estimate its value, excluding the benefit or advantage accruing from such improvement; and such owner shall convey the estate to the body politic or corporate on behalf of which the assessment was made and may recover therefrom in contract the value so estimated. The commonwealth, county, city, town or district may sell any portion of said land which is not needed for such improvement.

Historical and Statutory Notes

St.1866, c. 174, § 8.
St.1868, c. 75.
St.1871, c. 382, § 5.
P.S.1882, c. 51, § 4.
R.L.1902, c. 50, § 4.
St.1917, c. 344, pt. 3, § 4.
St.1918, c. 257, § 219, subs. 3.
St.1919, c. 5.
St.1920, c. 2.

§ 4. Collection

Within a reasonable time after making the assessment the board shall certify to the assessors the list of assessments upon land in each town who shall forthwith commit such assessments with their warrant to the collector of taxes thereof, and he shall forthwith send notice in accordance, except as to the date of notice, with section three of chapter sixty, to the person designated under section one as the owner of each parcel assessed, and any demand for the payment of such assessment shall be made upon such person. Except as otherwise herein provided, the collector shall have the same powers and be subject to the same duties with respect to such assessments as in the case of the annual taxes upon real estate, and the law in regard to the collection of the annual taxes, to the sale of land for the non-payment thereof and to redemption therefrom shall apply to assessments made under this chapter, so far as the same are applicable; but the owner of land assessed shall not be personally liable for the assessment thereon. Every collector of taxes receiving a list and warrant from the assessors shall collect the assessment therein set forth, and at such times as the assessors shall direct, or in the case of assessments relating to state funded projects, as the collector of taxes and the board determine shall pay over to the treasurer of the body politic on behalf of which the assessment was made the amounts collected by him.

Amended by St.1933, c. 63, § 1; St.1988, c. 15, § 54.

Historical and Statutory Notes

St.1841, c. 115, § 3.
G.S.1860, c. 48, § 5.
St.1866, c. 174, § 6.
St.1868, c. 75.
St.1871, c. 217, § 4.
St.1871, c. 382, § 6.
St.1877, c. 37.
St.1878, c. 184, § 3.
P.S.1882, c. 50, §§ 5, 10, 25; c. 51, §§ 5, 17.
St.1884, c. 237.
St.1891, c. 97.
St.1892, c. 245, § 1.
St.1893, c. 380.
St.1896, c. 236.
St.1896, c. 251, § 1.
St.1897, c. 274.
St.1898, c. 473, § 1.
R.L.1902, c. 49, § 22; c. 50, §§ 10, 13.
St.1911, c. 75.
St.1917, c. 344, pt. 3, §§ 10, 13.
St.1918, c. 257, §§ 214, 219, subs. 4, 17.
St.1919, c. 5.
St.1920, c. 2.
St.1920, c. 124.
St.1923, c. 377, § 2.
St.1927, c. 3.

§ 5. Petition for abatement; filing, etc.

The owner of any real estate upon which betterments have been assessed may, within six months after notice of such assessment has been sent out by the collector, file with the board a petition for an abatement thereof, and the board shall grant such abatement as may be necessary to make such assessment conform to section one. Such petition may be filed with the clerk or secretary of the board, or delivered by mail or otherwise at their office. The board shall within ten days after their decision upon the petition give written notice thereof to the petitioner. If an assessment is abated by the board the assessment so determined shall stand as the assessment upon the land, and if it has not been paid shall be collected in the same manner as the original assessment. If the assessment has been paid, the person by whom it was paid shall be reimbursed by the body politic on behalf of which it was assessed to the amount of the abatement allowed, with interest at the rate of six per cent per annum from the time of payment.

Amended by St.1933, c. 157, § 2.

Historical and Statutory Notes

St.1841, c. 115, § 4.

G.S.1860, c. 48, § 6.
St.1874, c. 283, § 1.
P.S.1882, c. 50, § 6; c. 51, § 16.
St.1895, c. 450, § 4.
R.L.1902, c. 49, § 4; c. 50, § 12.
St.1917, c. 344, pt. 3, § 12.
St.1918, c. 257, §§ 214, 219, subs. 5.
St.1919, c. 5.
St.1920, c. 2.
St.1923, c. 377, § 3.

§ 6. Filing petition; time limitation; extension

If a suit in which the validity of an assessment is drawn in question is brought within the time for filing a petition to the board for the abatement thereof or within six months after the determination of an earlier suit involving the same question, brought within the time for filing such petition, which failed for want of jurisdiction, defect of form or other like cause not decisive of the merits of the controversy, the petition may be filed within six months after the final determination of such suit.

Historical and Statutory Notes

St.1918, c. 257, § 219, subs. 6.
St.1919, c. 5.
St.1920, c. 2.

§ 7. Appeal to superior court

A person who is aggrieved by the refusal of the board to abate an assessment in whole or in part may within thirty days after notice of their decision appeal therefrom by filing a petition for the abatement of such assessment in the superior court for the county in which the land assessed is situated. If a single parcel of land so assessed lies in more than one county the petition may be filed in the superior court for either such county, and the court in which such petition is first filed shall have exclusive jurisdiction thereof.

Historical and Statutory Notes

St.1841, c. 115, § 4.
G.S.1860, c. 48, § 6.
St.1866, c. 174, § 7.
St.1868, c. 75.
St.1871, c. 217, § 2.
St.1871, c. 382, § 7.
P.S.1882, c. 50, § 6; c. 51, § 6.
R.L.1902, c. 49, § 4; c. 50, § 6.
St.1917, c. 344, pt. 3, § 6.
St.1918, c. 257, §§ 214, 219, subs. 7.
St.1919, c. 5.
St.1920, c. 2.

§ 8. Death of person entitled to petition for abatement

If a person who is entitled to petition for an abatement under this chapter dies within the time limited for such petition without having filed the same, his executor, administrator, heir or devisee, if interested, may, within one year after his interest vests, file such petition in the same manner and with the same effect as if filed by the deceased in his lifetime.

Historical and Statutory Notes

St.1859, c. 228.
G.S.1860, c. 127, § 21.
P.S.1882, c. 165, § 23.
R.L.1902, c. 171, § 16.

§ 9. Trial procedure

Upon the filing of a petition under section seven, process shall issue and service be made as in suits in equity upon the body politic on behalf of which the assessment was made. Any defence to the petition not relating to the amount of the assessment must be pleaded within thirty days of the return day of the subpoena; but no answer relating solely to the amount of the assessment shall be filed, and there shall be no default for failure to enter an appearance. The trial shall be by the court unless one of the parties within the time prescribed in actions at law files a notice that he desires a trial by jury; and the court may appoint an auditor. Interrogatories may be filed with the same effect as in actions at law. The court, as the request of any party, shall advance the petition so that it may be heard and determined with as little delay as possible. In case petitions have been filed for the assessment of damages and for the abatement of betterments with respect to the same parcel of land and the same public improvement, the petitions shall be tried together. In case of trial by jury, if either party requests it the jury shall view the premises. If the assessment is not reduced the respondent shall recover costs and an execution shall issue therefor as in actions at law; but if the assessment is reduced the petitioner shall recover judgment for costs, and the assessment so determined shall stand as the assessment upon the land, and if it has not been paid shall be collected in the manner provided for an original assessment. If the assessment has been paid judgment shall be entered for the petitioner for the amount of the reduction, with interest at the rate of four per cent per annum from the time of payment.

Historical and Statutory Notes

St.1871, c. 217, §§ 3, 4.
St.1871, c. 382, § 8.
P.S.1882, c. 51, § 7.
R.L.1902, c. 50, § 7.
St.1917, c. 344, pt. 3, § 7.
St.1918, c. 257, § 219, subs. 8.
St.1919, c. 5.

St.1919, c. 333, § 22.
St.1920, c. 2.

§ 10. Appeal to county commissioners

A person who is aggrieved by the refusal of a board of officers of a city, town or district to abate an assessment may, instead of pursuing the remedy provided by section seven, appeal within the time limited therein to the county commissioners of the county in which the land assessed is situated. The person so appealing shall, within ten days after the filing of said appeal, give written notice thereof to such city, town or district. Such notice may be given by mailing a copy of the appeal by registered mail, postage prepaid, to the board which made the assessment or to the clerk of such city, town or district. The county commissioners shall hear the parties, and shall have the same powers and duties with respect to the abatement of such assessment as the board by which it was assessed, and may make an order as to costs. The decision of the county commissioners shall be final.
Amended by St.1933, c. 147.

Historical and Statutory Notes

St.1878, c. 184, § 2.
P.S.1882, c. 50, §§ 8, 9.
R.L.1902, c. 49, § 7.
St.1918, c. 257, § 219, subs. 9.
St.1919, c. 5.
St.1920, c. 2.

§ 10A. Petition for abatement; procedure on failure of board to act

If the board with which a petition for the abatement of an assessment has been duly filed in accordance with the provisions of section five fails to act upon said petition within four months of the date of the filing of such petition, the petition shall be deemed to be denied, and the petitioner shall have the right within sixty days after the expiration of said four months to appeal as if the board had in fact denied the said petition; provided, that if the assessment has been paid, no appeal shall be taken after the expiration of ten months from the time of payment.
Added by St.1933, c. 157, § 1.

§ 11. Contribution by lessee; rights and remedies of lessee

If an assessment is made upon land the whole or part of which is leased, the owner shall pay the assessment, and may collect of the lessee an additional rent for the portion so leased equal to ten per cent per annum on that proportion of the amount paid which the value of the leased portion bears to that of the whole estate, after deducting from the whole amount any money received for damages to such land in excess of what he has necessarily expended thereon by reason of such damages. A lessee aggrieved by the imposition of this burden may, within six months from the time demand is made upon him for such additional rent, file a petition in the superior court for the county in which the land is situated, to determine the proportion of the assessment which he ought to bear, and the proportion determined upon the petition shall be substituted for the proportion provided by this section. If such proportion is reduced the lessee shall recover costs from the owner; otherwise the owner shall recover costs from the lessee.

Historical and Statutory Notes

St.1871, c. 382, § 9.
P.S.1882, c. 51, § 8.
R.L.1902, c. 50, § 8.
St.1917, c. 344, pt. 3, § 8.
St.1918, c. 257, § 219, subs. 10.
St.1919, c. 5.
St.1920, c. 2.

§ 12. Lien status of assessment; duration of lien

Assessments made under this chapter shall constitute a lien upon the land assessed. The lien shall take effect upon the recording of the order stating that betterments are to be assessed for the improvement. Notwithstanding any other provision of this section or chapter eighty-three, if a county, city, town, or district elects to send notice to the owner of the land assessed indicating the amount of the assessment for the betterment, and said owner pays the amount due, no lien shall be recorded. The assessors shall indicate on the next tax bill that the amount of the betterment assessment has been paid and no further notation or demand shall be made on land so assessed. Except as otherwise provided, such lien shall terminate at the expiration of two years from October first in the year in which the assessment is first placed on the annual tax bill under section thirteen or, if an assessment has been apportioned, from October first in the year in which the last portion is so placed upon the annual tax bill, whichever is later, if in the meantime in either case the estate has been alienated and the instrument alienating the same has been recorded. If there is no recorded alienation within such period, the lien shall continue until there is a recorded alienation. If the validity of an assessment made under this chapter is called in question in any legal

proceeding to which the board which made the assessment or the body politic for the benefit of which it was made is a party, instituted prior to the expiration of the lien therefor, the lien shall continue until one year after the validity of the assessment is finally determined, even though an alienation be recorded in the meantime. If at any time while a lien established by this section is in force, a sale or taking cannot in the opinion of the collector be legally made because of any federal or state law or because of any injunction or other action of, or proceeding in, any federal or state court or because of the action of any administrative body, the lien shall, if the statement provided for in section thirty-seven A of chapter sixty is filed, continue as provided in said section thirty-seven A, subject, however, to any lawful action under any paramount authority conferred by the constitution or laws of the United States or the constitution of the commonwealth. If the time for payment of an assessment is extended under section thirteen A or under any general or special law, the lien shall, if the statement provided for in section thirty-seven A of chapter sixty is filed, continue as provided in said section thirty-seven A. A lien under this section may be dissolved by filing for record in the registry of deeds of the county or district where the land subject to the lien lies a certificate, in a form approved by the commissioner of revenue, from the collector of taxes that the assessment, constituting the lien, together with any interest and costs thereon, has been paid or legally abated. The collector of taxes shall charge four dollars for each certificate so issued, and the money so received shall be paid into the town treasury.

Amended by St.1943, c. 252, § 1; St.1943, c. 478, § 4; St.1947, c. 116; St.1953, c. 344; St.1955, c. 194; St.1972, c. 184; St.1978, c. 514, § 189; St.1994, c. 138.

Historical and Statutory Notes

St.1841, c. 115, § 3.
G.S.1860, c. 48, § 5.
St.1866, c. 174, § 6.
St.1868, c. 75.
St.1871, c. 217, § 4.
St.1871, c. 382, §§ 6, 8.
St.1878, c. 184, § 3.
St.1878, c. 249.
P.S.1882, c. 50, §§ 5, 10, 25; c. 51, §§ 5, 7.
St.1884, c. 237.
St.1886, c. 210.
St.1891, c. 97.
St.1893, c. 380.
St.1897, c. 274.
R.L.1902, c. 49, § 23; c. 50 § 10.
St.1917, c. 344, pt. 3, § 10.
St.1918, c. 257, §§ 214, 219, subs. 11.
St.1919, c. 5.
St.1920, c. 2.
St.1923, c. 377, § 4.

§ 13. Apportionment and reapportionment

Assessments made by a board of the commonwealth under this chapter shall bear interest at one rate of five per cent per annum or, at the election of the board at a rate not to exceed two per cent above the rate of interest chargeable to the body politic on behalf of which the assessment was made, for the betterment project to which the assessments relate, from the thirtieth day after assessments have been committed to the collector. All other assessments made under this chapter shall bear interest at one rate of five per cent per annum or, at the election of the city or town at a rate equal to two per cent above the rate of interest chargeable to the city or town, for the betterment project to which the assessments relate, from the thirtieth day after assessments have been committed to the collector. The assessors shall add each year to the annual tax assessed with respect to each parcel of land all assessments, constituting liens thereon, which have been committed to the collector prior to January second of such year and which have not been apportioned as hereinafter provided, remaining unpaid, as certified to them by the collector, when the valuation list is completed, with interest to the date when interest on taxes becomes due and payable. At any time before the completion by the assessors of the valuation list for the year in which such assessments will first appear on the annual tax bill, the board of assessors may, and at the request of the owner of the land assessed shall, apportion all assessments or unpaid balances thereof made under this chapter into such number of equal portions, not exceeding twenty, as is determined by said board or as is requested by the owner, as the case may be, but no one of such portions shall be less than five dollars; provided, that, if an original assessment exceeds one hundred dollars and has been placed upon the annual tax bill, or has been apportioned into a number of portions less than twenty and the first portion has been placed upon an annual tax bill, the board of assessors may in its discretion, upon a request for the apportionment of such assessment into twenty portions made by the owner prior to a sale or taking of the land for the non-payment of such assessment or portion and upon payment of any necessary intervening charges and fees and such portions of such assessment as would have become due and payable if the request for apportionment had been seasonably made, apportion or reapportion the said assessment as aforesaid, and if any other tax or assessment constituting a lien upon the

parcel to which the assessment so apportioned or reapportioned relates remains unpaid after such apportionment or reapportionment, the collector may institute proceedings anew for the sale or taking of such parcel at any time prior to the expiration of the lien or of a period of twenty days after such apportionment or reapportionment, whichever is the later. In any case in which an assessment relates to a state-funded project, the apportionment or reapportionment described herein shall be undertaken in accordance with the terms aforesaid by the board on whose behalf the assessment was made; provided, however, that the apportionment shall be made of said assessments or unpaid balances together with any interest due thereon. The assessors shall add one of said portions, with interest on the amount remaining unpaid from thirty days after the commitment of the original assessment to the collector to the date when interest on taxes becomes due and payable, to the first annual tax upon the land and shall add to the annual tax for each year thereafter one of said portions and one year's interest on the amount of the assessment remaining unpaid until all such portions shall have been so added; all assessments and apportioned parts thereof, and interest thereon as herein provided, which have been added to the annual tax on any parcel of land shall be included in the annual tax bill thereon. After an assessment or a portion thereof has been placed on the annual tax bill, the total amount of said bill shall be subject to interest under and in accordance with the provisions of section fifty-seven of chapter fifty-nine.

Notwithstanding a prior apportionment, the assessors, upon written application of the owner of the land assessed, shall order that the full amount, or any portion thereof, remaining unpaid of any assessment be payable forthwith and shall commit said amount, together with interest thereon from thirty days after the commitment of the original assessment if no portion has been added to a tax levy, or if a portion has been added to a tax levy, then with interest from October first of the year to which the last portion has been added, with their warrant therefor, to the collector for collection. If a part of a prior apportioned assessment is ordered to be payable forthwith, the payments shall be credited to the terminal or final years so as to reduce the period of payment.

Amended by St.1933, c. 63, § 2; St.1933, c. 254, § 63; St.1934, c. 315, § 1; St.1938, c. 489, § 1; St.1941, c. 595; St.1954, c. 286; St.1956, c. 311, §§ 1, 2, St.1960, c. 248; St.1971, c. 270; St.1972, c. 109, § 1; St.1977, c. 216, § 1; St.1977, c. 749, § 2; St.1988, c. 15, §§ 55, 56.

Historical and Statutory Notes

St.1866, c. 174, §§ 6, 7.
St.1868, c. 75.
St.1869, c. 367, § 2.
St.1871, c. 217, § 4.
St.1871, c. 382, §§ 6, 8.
St.1878, c. 249.
P.S.1882, c. 50, § 25; c. 51, §§ 5, 7.
St.1884, c. 237.
St.1891, c. 97.
St.1893, c. 380.
St.1896, c. 158, §§ 1, 4.
St.1896, c. 251.
St.1897, c. 151.
St.1897, c. 274.
St.1899, c. 319, §§ 3, 4.
R.L.1902, c. 49, §§ 14, 15, 21, 23, 33; c. 50, §§ 5, 10, 15 to 17.
St.1907, c. 177.
St.1908, c. 216, § 1.
St.1908, c. 356.
St.1910, c. 330.
St.1914, c. 450.
St.1917, c. 344, pt. 3, §§ 5, 10, 15, 16, 18.
St.1918, c. 257, §§ 214, 219, subs. 12.
St.1919, c. 5.
St.1920, c. 2.
St.1923, c. 377, § 5.

§ 13A. Land devoid of structures; extension of time for payment of assessments

The board making the order for the assessment of any betterment upon land which is not built upon may extend the time of payment of the assessment until it is built upon or for a fixed time; but interest at the rate of four per cent per annum shall be paid annually upon the assessment from the time it was made, and the assessment shall be paid within three months after such land is built upon or at the expiration of such fixed time.

Added by St.1943, c. 252, § 2.

§ 13B. Deferral and recovery agreements; application; recordation; lien

In a city or town which accepts the provisions of this section, the board of a county, city, town or district making the order for the assessment of any betterment, or balance of any assessment apportioned in accordance with the provisions of section thirteen, shall, upon the application of the owner of the real property assessed, if such owner is eligible for an exemption under clause Forty-first A of section five of chapter fifty-nine, enter into a deferral and recovery agreement with such owner on behalf of the city or town. In any instance in which a board of the commonwealth makes an order for the assessment of any betterments, said board of the commonwealth may enter into a deferral and recovery agreement on its own behalf in accordance with the terms of this section. Any such application shall be filed with the appropriate

board within sixth months after notice of such assessment has been sent out by the collector. Such application may be filed with the clerk or secretary of said board, or delivered by mail or otherwise at their office.

The said agreement shall provide:

(1) that no sale or transfer of such real property may be consummated unless the betterment assessment which would otherwise have been collected on such real property has been paid, with interest as applied in accordance with the provisions of section thirteen;

(2) that upon the demise of the owner of such real property, the heirs-at-law, assignees or devisees shall have first priority to said real property by paying in full the total betterment assessment which would otherwise have been due, plus interest; provided, however, if such heir-at-law, assignee or devisee is a surviving spouse who enters into a betterment assessment deferral and recovery agreement under this section, payment of the betterment assessment and interest due shall not be required during the life of such surviving spouse;

(3) that if the betterment assessments due, plus interest, are not paid by the heir-at-law, assignee or devisee or if payment is not postponed during the life of a surviving spouse, such betterment assessments and interest shall be recovered from the estate of the owner; and

(4) that any joint owner or mortgagee holding a mortgage on such property has given written prior approval for such agreement, which written approval shall be made a part of such agreement.

In the case of each betterment assessment deferral and recovery agreement entered into between said board making the order for the assessment of a betterment and the owner or owners of such real property, said board shall forthwith cause to be recorded in the registry of deeds of the county or district in which the city or town is situated a statement of their action which shall constitute a lien upon the land covered by such agreement for such betterment assessment as has been assessed under the provisions of this chapter, plus interest as hereinafter provided. The statement shall name the owner or owners and shall include a description of the land. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. The filing fee for any statement recorded on behalf of a board of the commonwealth shall be paid by the owner or owners of such real property. The filing fee for other such statements shall be paid by the city or town and shall be added to and become a part of the taxes due.

Added by St.1977, c. 749, § 1. Amended by St.1988, c. 15, §§ 57 to 59.

§ 14. Repealed, 1923, 377, Sec. 6

§ 15. Division of assessed land

If land which is subject to a lien for an assessment made under this chapter is subsequently divided by sale, mortgage, partition or otherwise and such division has been duly recorded in the registry of deeds, the board, before the land has been advertised for sale for non-payment of the assessment, may, or upon the written request of the owner or mortgagee of a portion thereof, accompanied by a plan sufficient for the identification of the division of the whole estate, with the names of the different owners thereof, shall, divide said assessment or the amount thereof remaining unpaid, and the costs and interest accrued thereon, among the several parcels into which said land has been divided, assessing upon each parcel the part of the original assessment remaining unpaid proportionate to the special benefit received by such parcel from the improvement. After such assessment has been so divided, only the part of the assessment, interest and costs assessed upon each parcel shall constitute a lien upon such parcel. At least seven days prior to making such division the board shall send by registered mail to all owners of any interest in the land assessed, whose addresses are known to them, a notice of their intention to make such division and of the time appointed therefor, unless such notice has been waived. A person aggrieved by any action of the board under this section shall have the same remedy as a person aggrieved by the refusal of the board to abate an assessment.

Amended by St.1989, c. 341, § 59.

Historical and Statutory Notes

St.1897, c. 138, §§ 1 to 5.
R.L.1902, c. 49, §§ 16 to 20.
St.1908, c. 453.
St.1918, c. 257, § 219, subs. 14.
St.1919, c. 5.
St.1920, c. 2.

§ 16. Reassessment

If an assessment is invalid and has not been paid in full or has been paid under such circumstances

that it can be recovered back, it may be reassessed by the board in the amount for which the original assessment ought to have been made, at any time before the expiration of two years from the date of the assessment, if the land has in the meantime been alienated; otherwise at any time before the alienation thereof. Such assessment shall be a lien upon any sum paid on account of the original assessment, and to the extent that it is not thereby satisfied shall be a lien upon the land. It shall be collected in the same manner as an original assessment, and shall in all other respects be subject to this chapter.

Historical and Statutory Notes

St.1871, c. 217, § 5.
St.1871, c. 382, § 2.
St.1872, c. 246.
P.S.1882, c. 51, § 2.
St.1892, c. 245, § 3.
R.L.1902, c. 49, § 9; c. 50, § 2.
St.1917, c. 344, pt. 3, § 2.
St.1918, c. 257, § 219, subs. 15.
St.1919, c. 5.
St.1920, c. 2.

§ 17. Application of chapter

Whenever a formal vote or order for the laying out or construction of a public improvement, or for the taking of land therefor, states that betterments are to be assessed, no betterments shall be assessed except under this chapter or chapter eighty A, and all proceedings relating to such betterments shall be as herein or therein provided, notwithstanding any special act hitherto enacted.

Historical and Statutory Notes

St.1918, c. 257, § 219, subs. 16.
St.1919, c. 5.
St.1920, c. 2.
St.1929, c. 380, § 3.

CHAPTER 83

SEWERS, DRAINS AND SIDEWALKS

Section

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The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1. Authorization; connecting sewers; approval of plans; acquisition of lands by eminent domain or purchase; agreements with municipalities or districts; contracts

A city or town may lay out, construct, maintain and operate a system or systems of common sewers and main drains in public or private ways for a part or the whole of its territory as they adjudge necessary for the public convenience or the public health with such connections and other works as may be required for a system or systems of sewerage and drainage, stormwater treatment and disposal, and sewage treatment and disposal. Such works for sewage treatment and disposal may include any wastewater treatment facility for treating, neutralizing or stabilizing sewage including treatment or disposal plants; the necessary intercepting, outfall and outlet sewers; pumping stations integral to such facilities; and equipment and appurtenances related to the foregoing. The works for drainage may include a stormwater treatment facility or measure of treating, or removing sediment or contaminants from, stormwater discharges. For the purposes of this chapter the word "sewage" shall mean wastewater from homes, public buildings, commercial or industrial establishments, or any combination thereof, and shall include any surface or ground water that may be present therein. For the purposes of this chapter, the word 'stormwater' shall mean surface runoff from precipitation.

A city or town may install and maintain, in any way therein where sanitary sewers are constructed, such connecting sewers within the limits of such way as may be necessary to connect any estate which abuts upon the way.

No act shall be done except in the making of surveys, reports and other preliminary investigations, until the plan for said system or systems of sewerage and sewage treatment and disposal has been approved by the department of public health.

The aldermen of a city or selectmen, sewer commissioners, or road commissioners, acting for and on behalf of a city or town, may take by eminent domain under chapter seventy-nine, or acquire by purchase or otherwise, any lands, rights of way or easements, public or private, in said city or town, necessary for accomplishing any purpose mentioned in this section, and may construct such sewers or drains under or over any bridge, railroad, railway, or public way, or within the location of any railroad, and may enter upon and dig up any private land, public way or railroad location, for the purpose of laying such sewers or drains and of maintaining and repairing the same, and may do any other thing proper or necessary for the purpose of this section; provided that they shall not take in fee any land of a railroad corporation, and that they shall not enter upon or construct any sewer or drain within the location of any railroad corporation except at such time and in such manner as they may agree upon with such corporation, or, in case of failure to agree, as may be approved by the department of telecommunications and energy. Any person injured in his property by such action may recover damages from such city or town under chapter seventy-nine.

Any city, town or district may enter into agreements and contracts with the Massachusetts Water Resources Authority for the purpose of making connections and for the collection, treatment and disposal of sewage. No connection shall be made until the plans have been approved by the department of environmental protection and in instances within the sewer system of the Massachusetts Water Resources Authority until the contract and plans are approved by the said Authority. The word "district", as used in this paragraph, shall be construed, so far as apt, as it is defined in section one A of chapter forty.

Until the board of sewer commissioners has first been elected or the selectmen have first been authorized by vote to act as such board, as the case may be, the town may carry on such work by a duly authorized committee of the town. Said committee shall serve without compensation and shall have all the powers and authority usually conferred upon a board of sewer commissioners by law.

A city, town, commission or district through its sewer department, if any, if thereunto authorized by ordinance, or by-law or by vote of its governing body if a commission or district, may make contracts with, or may go to aid any other city, town, commission or district with regard to the operation, repair and maintenance of the physical properties of its system or systems of sewers and drains. Any such ordinance, by-law or vote may authorize the head of the department in charge of sewers and drains to enter into contracts or to extend such aid subject to such conditions and restrictions as may be prescribed therein. Members of such departments of cities, towns, commissions or districts while in the performance of their duties under such contracts or in extending such aid shall have the same immunities and privileges as if performing the same work in their respective cities, towns, commissions, and districts. Any city, town, commission or district aided under this section shall compensate any city, town, commission or district rendering aid as aforesaid, for such aid and for the whole or any part of any damage to its property sustained in the course of rendering such aid. Any contracts under this section may be for a period not exceeding twenty years.

Amended by St.1964, c. 736, § 2; St.1969, c. 597, § 2; St.1969, c. 758, § 7; St.1984, c. 372, § 41; St.1987, c. 770, § 24; St.1990, c. 177, § 143; St.1992, c. 343, § 3; St.1997, c. 164, § 79; St.2004, c. 149, §§ 135 to 137, effective July 1, 2004.

Historical and Statutory Notes

St.1709–10, c. 5, § 2.
St.1796, c. 47, § 2.
R.S.1836, c. 27, § 2.
St.1841, c. 115, §§ 1, 6.
St.1857, c. 225, § 1.
G.S.1860, c. 48, §§ 1, 3, 9.
St.1869, c. 111, § 1.
St.1871, c. 158, § 2.
St.1873, c. 51.
P.S.1882, c. 50, §§ 1, 13.
St.1890, c. 124.
St.1892, c. 245, § 4.
St.1893, c. 304, § 2.
St.1893, c. 423, § 24.
R.L.1902, c. 49, §§ 1, 12, 25.

§ 1A. Common sewers and main drains in public or private ways; voter approval and comprehensive water resources management plan

Notwithstanding the provisions of sections 1 and 3 to the contrary, any municipality or sewer district

adopting this section is hereby authorized to lay out, construct, maintain and operate a system or systems of common sewers and main drains in public or private ways for that part of its territory as it adjudges necessary to reduce or eliminate the impacts of nutrient enrichment on surface water bodies or sources of drinking water with such connections and other works as may be required for a system or systems of sewerage and drainage, and sewage treatment and disposal. Adoption of this section is subject to majority vote of the municipality and subject further to said municipality having an approved comprehensive water resources management plan hereinafter referred to as (CWMP) as defined by the department of environmental protection hereinafter referred to as (DEP).
Added by St.2008, c. 312, § 10, eff. Aug. 14, 2008.

§ 1B. Connection of abutting land to common sewer; requirements; amendment of comprehensive water resources management plan

At the commencement of operation of the municipalities' sewer system authorized by section 1A, the owner of land abutting upon a private or public way in which a common sewer has been laid shall be required by the board or officer having charge of the maintenance and repair of sewers to connect such land with a common sewer only if the land in question is within the areas identified in the department of environmental protection-approved CWMP and has been specifically identified in the plan as requiring wastewater collection and treatment for flows in existence on said properties at the time of adoption of this act in order to protect surface waters or drinking water resources from the effects of nutrient enrichment; or the on-site subsurface sewage disposal system serving said land fails to comply with the provisions of 310 CMR 15.000, et seq. and an on-site subsurface sewage disposal system cannot be constructed on the property in compliance with said regulations and an enhanced treatment system under remedial use cannot be designed and constructed to adequately treat sewage from said property; or to service housing of which at least 15 per cent of the housing units are deed restricted to residents with incomes no greater than 80 per cent of the area median income paying no more than 30 per cent of their income towards housing. The town shall not allow an abutting property owner utilizing an enhanced treatment system under remedial use to opt out of connecting to the sewer system unless the town implements a monitoring and inspection plan approved by the department of environmental protection for such remedial system or systems. Such plan may include the assessment of a reasonable fee by the board of health to implement the monitoring and inspection plan.

Notwithstanding any provision of sections 1 and 3 to the contrary, owners of land not identified in the CWMP as needing to be connected to the municipal treatment works shall not be permitted to connect to the sewer system. Said plan may be amended from time to time by the board or officer having charge of sewers, after a public hearing conducted to consider such amendment, and upon approval of the department of environmental protection. The board or officer having charge of sewers shall adopt regulations within 120 days after the adoption of this act establishing publication and notification procedures to carry out the purposes of this section.
Added by St.2008, c. 312, § 10, eff. Aug. 14, 2008.

§ 1C. Certification by board of health for additional connections; service for municipal buildings, public restrooms or public service uses

After commencement of operations of the sewer system authorized pursuant to section 1A, additional connections shall be permitted within the final area of concern by such board or officer having charge of the maintenance and repair of sewers, subject to available capacity, only upon certification by the board of health that the on-site subsurface sewage disposal system on land abutting upon a private or public way in which a common sewer has been laid cannot comply with the provisions of 310 CMR 15.000, et seq., or in the case of new construction, expansion of an existing structure, a change in use, or increases in flow from said land, such expansion, change in use, or increase in flow does not result in sewage flow in excess of the amount of said regulations flow capacity or actual flow resulting from a legal use of said land, whichever is greater, which existed on the date of adoption of this act as determined by the board of health. Notwithstanding anything to the contrary contained herein, the board or officer having charge of the maintenance and repair of sewers may at any time permit extensions, new connections or increases in flow to the sewer system, subject to capacity, to serve municipal buildings, public restrooms, or other public service uses, including but not limited to housing of which at least

15 per cent of the housing units are deed restricted to residents with incomes no greater than 80 per cent of the area median income paying no more than 30 per cent of their income towards housing.
Added by St.2008, c. 312, § 10, eff. Aug. 14, 2008.

§ 1D. Assessments upon connection of abutting land to common sewer

Notwithstanding the provisions of chapters 80 and 83 to the contrary, a municipality acting under section 1A may make assessments upon owners of land abutting upon a private or public way in which a common sewer has been laid only at the time of actual connection to the common sewer. Nothing herein shall preclude the town from making estimated sewer assessments pursuant to section 15B. The municipality may make equitable adjustments to the annual charges established pursuant to section 16 for the use of common sewers by owners of land who connect under this act for the purpose of insuring an equitable distribution of the total sewer system costs, including assessments and sewer use charges.
Added by St.2008, c. 312, § 10, eff. Aug. 14, 2008.

§ 1E. Written decision regarding approval or denial of connection to common sewer; appeal

Every decision by the board or officer having charge of sewers permitting or denying a connection to the sewer system pursuant to sections 1A to 1D, inclusive, shall be made in writing. Any person aggrieved by such a decision may appeal said decision within 30 days of issuance pursuant to the provisions of section 14 of chapter 30A.
Added by St.2008, c. 312, § 10, eff. Aug. 14, 2008.

§ 1F. Discrimination prohibited

In carrying out the provisions of sections 1A to 1E, inclusive, a municipality shall not discriminate against any person on the grounds of race, color, marital status, physical disability, age, sex, sexual orientation, religion, ancestry or national origin in any manner prohibited by federal or state law.
Added by St.2008, c. 312, § 10, eff. Aug. 14, 2008.

§ 1G. Separate account; collection, deposit and use of funds

Notwithstanding the provisions of any general or special law to the contrary, a municipality with a comprehensive water resources management plan under review or approved by the department of environmental protection may establish and maintain a separate account into which it may collect and deposit and expend funds from property owners for the difference in cost between a conventional subsurface wastewater disposal system as required in 310 CMR 15.00, et seq. and the cost of a subsurface wastewater disposal system designed to reduce the nitrogen discharge from said system as long as the property in question is identified in the CWMP as being a priority for the installation of a wastewater collection and treatment system for the purposes of reducing the impacts of excessive nitrogen on marine waters and drinking water supplies. Funds from this account may be used only for the purpose of the construction, maintenance and operation of said wastewater treatment and collection works and shall be applied to the costs of connection and or betterment assessed to the property in question.
Added by St.2008, c. 312, § 10, eff. Aug. 14, 2008.

§ 1H. Borrowing or assessing funds for construction of wastewater treatment system

Notwithstanding section 7 of chapter 44, a municipality or sewer district adopting section 1A may borrow and assess betterments for a term not to exceed 50 years or the useful life as approved by the department of environmental protection, whichever is shorter, for the construction its wastewater treatment systems and conveyances determined; and provided further that short term borrowing may extend for a period not to exceed 5 years.
Added by St.2008, c. 312, § 10, eff. Aug. 14, 2008.

§ 2. Plans and records

Plans and descriptions of all main drains and common sewers belonging to a town, with a true record of the charges of making and repairing said drains and sewers and of all assessments therefor, shall be kept in the office of the town clerk or in such other office of the town as the town by ordinance or by-law may determine.

Historical and Statutory Notes

St.1878, c. 232, § 2.
P.S.1882, c. 50, § 14.
R.L.1902, c. 49, § 24.
St.1907, c. 365.

§ 3. Sewer connections

The board or officers of a city or town having charge of the repair and maintenance of sewers

may, upon request of the owner of land and payment by him of the actual cost thereof, construct a particular sewer from the street line to a house or building. A town may appropriate money for connecting estates within its limits with common sewers, and no estate shall, in any year in which such an appropriation is made, be connected with a common sewer except in the manner hereinafter provided. If bonds or notes are issued to pay the cost of making such connections, the assessments provided for in section twenty-four shall be applied to the payment of such bonds or notes. If the board of health of a town making such appropriation shall order land abutting upon a public or private way in which a common sewer has been laid to be connected with such sewer, or if the owner of such land shall make to the board or officer having charge of the maintenance and repair of sewers application to connect his land with a common sewer, such board or officer shall make such connection.

Historical and Statutory Notes

St.1892, c. 245, § 4.
St.1899, c. 319, §§ 1, 2.
St.1900, c. 112.
R.L.1902, c. 49, §§ 12, 31, 32.

§ 3A. Private ways; repair of sewers

The board or officers of a city or town having charge of the repair and maintenance of sewers may at the request of the owner of land and payment by him of the actual cost thereof repair a break in a sewer laid in a private way and remove any sewerage flowing from such break.
Added by St.1968, c. 248.

§ 4. Highway ditches or drains

The department of highways, county commissioners, and the officers having charge of highways in any city or town may construct ditches or drains for the purpose of properly draining any highway, and may carry water away from any highway and over or through any land as they may deem necessary for public convenience or for the proper care or construction of such highway, and may purchase or take by eminent domain under chapter seventy-nine, on behalf of the commonwealth, county, city or town, such land or interest therein as may be necessary therefor. Such ditches and drains shall be under the control of said officials, who may enter upon any land for the purpose of constructing, repairing or maintaining the same; but they shall not enter upon or construct any ditches, drains or other works or lay any conduits or pipes or discharge any water within the location of any railroad corporation, except at such time and in such manner as they may agree upon with such corporation, or, in case of failure so to agree, as may be approved by the department of telecommunications and energy. The owner or occupant of land through which any ditch or drain has been constructed under this section may, after securing a permit from the officers having control of the ditch or drain, construct and maintain a bridge over the same. The damages sustained by any person in his property by takings or other acts herein authorized may be recovered under chapter seventy-nine. The department, board or officers who have taken an easement under this section may discontinue or abandon the same by filing for record in the registry of deeds a suitable instrument.
Amended by St.1991, c. 552, § 51; St.1997, c. 164, § 80.

Historical and Statutory Notes

St.1917, c. 329, §§ 1, 3.
St.1919, c. 350, §§ 111, 113.
St.1931, c. 394, § 39.

§ 5. Separate systems for drainage of water and sewage

In this section surface or storm water and such other waters as shall be specified by the department of public health shall be designated as waters and all other waters and sewage shall be designated as sewage. When a town has provided both a drain for waters and a sewer for sewage in a public way, the owner of every parcel of land abutting on such way or connected with such drain or sewer shall arrange his plumbing so that the waters shall be kept separate from the sewage; and shall make such connections with the drain and sewer respectively that the waters shall pass into the drain and the sewage into the sewer in accordance with the directions of the board or officer having charge of the repair and maintenance of sewers in such town.

Historical and Statutory Notes

St.1903, c. 383, § 1.

§ 6. Sewage disposal works

A town, with the approval of the department of environmental protection, after a public hearing by said department of all parties interested, of which notice shall be given by publication in one or more newspapers, may purchase land within its limits, or take the same by eminent domain under chapter

seventy-nine, for the treatment, purification and disposal of sewage. Towns or persons, owning or operating filter beds or other works for the treatment, purification and disposal of sewage shall provide and maintain works adequate for the treatment of the sewage at all times, and shall operate such works in such manner as will prevent a nuisance therefrom or the discharge or escape of unpurified or imperfectly purified sewage or effluent into any stream, pond or other water, or other objectionable result.

Amended by St.1975, c. 706, § 116; St.1990, c. 177, § 144.

Historical and Statutory Notes

St.1890, c. 124.
R.L.1902, c. 49, § 1.
St.1909, c. 433, § 1.

§ 7. Examination of sewage disposal works; prevention of nuisances

If the department of environmental protection determines upon examination that a filter bed or other works for the treatment, purification and disposal of sewage causes the pollution of a stream, pond or other water, or is likely to become a source of nuisance or create objectionable results in its neighborhood by reason of defective construction, inadequate capacity or negligence or inefficiency in maintenance or operation or from other cause, it may issue notice in writing to the town or person owning or operating such works requiring such enlargement or improvement in the works or change in the method of operation thereof as may be necessary for the proper maintenance and operation of the works and the efficient purification and disposal of the sewage. If said department determines after investigation that the unsatisfactory operation of a sewage disposal system is due wholly or partly to the discharge into the system of manufacturing waste or other substance of such character as to interfere with the efficient operation of said works, it may if necessary prohibit the entrance of such waste or other material, or may regulate the entrance thereof into the system, or may require the treatment of such waste or other material in such manner as may be necessary to prevent its interference with the operation of the works.

Amended by St.1975, c. 706, § 117; St.1990, c. 177, § 145.

Historical and Statutory Notes

St.1909, c. 433, § 3.
St.1919, c. 350, § 97.

§ 8. Digging up public ways; permits

No person shall dig up or make an excavation in a public way for the laying, altering or repairing of a drain or sewer without obtaining a written permit from the board or officer having charge of the maintenance and repair of sewers in the town in which such way is situated. Notwithstanding any contrary provision of any local ordinance or by-law, no such permit shall, except in case of an emergency, be approved or issued by said board or officer until copies of the notices to public utility companies required by section forty of chapter eighty-two have been filed with said board or officer by the applicant for such permit. Whoever violates any provision of this section shall be punished by a fine of not more than fifty dollars for the first offense and not less than fifty dollars nor more than one hundred dollars for any subsequent offense.

Amended by St.1963, c. 370, § 3.

Historical and Statutory Notes

St.1709–10, c. 5, § 1.
St.1796, c. 47, § 1.
R.S.1836, c. 27, § 1.
G.S.1860, c. 48, § 8.
P.S.1882, c. 50, § 12.
R.L.1902, c. 49, § 29.

§ 9. Obstruction of ditches

Whoever, by himself, his agents or servants, deposits in or along any ditch or drain constructed under section four any material which will obstruct the flow of water therein shall be punished by a fine of ten dollars, and shall be liable in tort to the commonwealth, the county, city or town controlling the ditch or drain for all damages caused thereby, for the cost and expense of removing the obstructing material and of restoring the ditch or drain to its former condition.

Historical and Statutory Notes

St.1917, c. 329, § 4.

§ 10. Rules and regulations regarding use and connections

A city, town or sewer district may, from time to time, prescribe rules and regulations regarding the use of common sewers to prevent the entrance or discharge therein of any substance which may tend to interfere with the flow of sewage or the proper operation of the sewerage system and the treatment and disposal works, for the connection of estates and buildings with sewers, for the construction, alteration, and use of all connections entering

into such sewers, and for the inspection of all materials used therein; and may prescribe civil penalties, not exceeding five thousand dollars for each day of violation of any such rule or regulation. A city, town, sewer district, or a district established for the purpose of managing stormwater, pursuant to section 1A of chapter 40, may from time to time prescribe rules and regulations for the use of main drains and the management of stormwater to prevent the discharge of sediment and pollutants therein which may tend to degrade wetlands, streams, other surface water bodies, and groundwater and to inspect the facilities for the collection and infiltration of stormwater in order to reduce flooding and improve the quality of and decrease the quantity of stormwater runoff; for the connection of estates and buildings with main drains; for the construction, alteration, and use of all connections entering into such main drains; and for the inspection of all materials used therein; and may prescribe civil penalties, not exceeding $5,000 for each day of violation of a rule or regulation. Such rules and regulations shall be published once in a newspaper published in the city or town, if there be any, and if not, then in a newspaper published in the county, and shall include a notice that said rules and regulations shall be available for inspection by the public, and shall not take effect until such publication has been made.

Amended by St.1964, c. 736, § 3; St.1985, c. 289; St.1987, c. 174, § 7; St.2004, c. 149, § 138, eff. July 1, 2004.

Historical and Statutory Notes

St.1892, c. 245, § 4.
R.L.1902, c. 49, § 12.
St.1909, c. 433, § 2.

§ 11. Sewer connections

The board of health of a town may require the owner or occupant of any building upon land abutting on a public or private way, in which there is a common sewer, to connect the same therewith by a sufficient drain, and such owner or occupant who fails to comply with such order shall be punished by a fine of not more than two hundred dollars.

Historical and Statutory Notes

St.1890, c. 132.
R.L.1902, c. 49, § 30.

§ 12. Repair of private drains

If a city council or a town accepts this section or has accepted corresponding provisions of earlier laws, the board of health may require the owner or occupant of an estate which drains into a private drain in a public or private way to put such drain in good repair and condition. If he fails to comply with said order within ten days after notice thereof, he shall be punished by a fine of not more than twenty dollars for every day during which such failure continues.

Historical and Statutory Notes

St.1893, c. 312.
R.L.1902, c. 49, § 35.

§ 13. Equity jurisdiction

The supreme judicial court and the superior court shall have jurisdiction in equity to restrain the unlawful use of common sewers or the placing or depositing of materials therein or the violation of regulations regarding the use thereof made under section ten, and to enforce the provisions of sections five to seven, inclusive.

Historical and Statutory Notes

St.1897, c. 116, § 2.
R.L.1902, c. 49, § 36.
St.1903, c. 383, § 4.
St.1909, c. 433, § 4.

§ 14. Sewer assessments; authorization

A person who enters his particular drain into a main drain or common sewer, or who by more remote means receives benefit thereby for draining his land or buildings, shall pay to the town a proportional part of the charge of making and repairing the same, and of the charge, not already assessed, of making and repairing other main drains and common sewers through which the same discharges, which shall be ascertained, assessed and certified by the aldermen, sewer commissioners, selectmen or road commissioners.

Historical and Statutory Notes

St.1841, c. 115, § 2.
G.S.1860, c. 48, § 4.
St.1878, c. 232, § 1.
P.S.1882, c. 50, § 4.
St.1893, c. 423, §§ 23, 24.
R.L.1902, c. 49, § 3.

§ 15. Sewerage systems; adoption; assessment; uniform units; separation of costs

The city council of a city or a town may adopt a system of sewerage for a part or the whole of its territory, and may provide that assessments under section fourteen shall be made upon owners of land within such territory by a fixed uniform rate or a rate based upon a uniform unit method.

A fixed uniform rate shall be based upon the estimated average cost of all the sewers therein,

according to the frontage of such land on any way in which a sewer is constructed, or according to the area of such land within a fixed depth from such way, or according to both such frontage and area; but no assessment in respect to any such land, which by reason of its grade or level or any other cause cannot be drained into such sewer, shall be made until such incapacity is removed. If the assessment is according to the area within such fixed depth, the lien therefor shall attach to the parcel assessed.

A uniform unit method shall be based upon sewerage construction costs divided among the total number of existing and potential sewer units to be served, after having proportioned the cost of special and general benefit facilities. Each sewer unit shall be equal to a single family residence. Potential sewer units shall be calculated on the basis of zoning then in effect. Existing and potential multifamily, commercial, industrial and semipublic uses shall be converted into sewer units on the basis of residential equivalents.

A city by ordinance or a town by by-law may separate the costs of general benefit facilities, including but not limited to pumping stations, trunk and force mains, from that of special benefit facilities, including but not limited to the sewer mains, serving adjacent properties. A portion of costs of the general benefit facilities may be apportioned by the uniform unit method on all areas to receive benefits within the pumping district or combination of districts. The cost of the general benefit facilities, attributable to undeveloped land not abutting a sewered street, may not be assessed until properties are serviced by public sewerage. The proportional cost of the special benefit and general benefit facilities may be assessed against all properties abutting a sewered street.

Amended by St.1978, c. 214; St.1996, c. 450, § 132.

Historical and Statutory Notes

St.1878, c. 232, § 5.
St.1879, c. 55.
P.S.1882, c. 50, § 7.
St.1894, c. 528.
R.L.1902, c. 49, § 5.

§ 15A. Redetermination of assessment

Any city at any meeting of the proper municipal authority, or any town at a town meeting, may, from time to time, redetermine the uniform rate or uniform unit fixed under section 15, or under any special law, and charged to abutters for, or to the existing and potential sewer units to be served by, the construction of sewers, but this section shall not apply to the Massachusetts Water Resources Authority.

Added by St.1948, c. 52, § 1. Amended by St.2006, c. 231, eff. Aug. 9, 2006.

§ 15B. Estimated sewer assessments; construction of water pollution control facilities

A city or town may assess and collect estimated sewer assessments in connection with the construction of water pollution collection, pumping, treatment and disposal facilities. The total amount of such estimated sewer assessments shall not exceed one-half of the municipality's liability under all contracts it has entered into for the construction of such facilities, and the total of such estimated assessments shall be allocated by the same method to be used for the allocation of the actual assessments upon the completion of the work.

When the final costs of construction of the facilities has been determined, the city or town may assess and collect actual sewer assessments. The provisions of chapter eighty relative to the apportionment, division, interest and collection of assessments shall apply to estimated assessments under this section, but the provisions of chapter eighty relating to abatements shall not apply to estimated assessments under this section.

Revenues from estimated assessments under this section shall be dedicated to the payment of the costs of constructing the facilities or to paying the principal and interest on any debt issued in connection with the construction of the facilities, until all such costs and debt service obligations have been paid in full.

Added by St.1991, c. 387.

§ 16. Charge for use of sewers

The aldermen of any city or the sewer commissioners, selectmen or road commissioners of a town, may from time to time establish just and equitable annual charges for the use of common sewers and main drains and related stormwater facilities, which shall be paid by every person who enters his particular sewer therein. The money so received may be applied to the payment of the cost of maintenance and repairs of such sewers or of any debt contracted for sewer purposes. In establishing quarterly or annual charges for the use of main drains and related stormwater facilities, the city, town, or district may either charge a uniform

fee for residential properties and a separate uniform fee for commercial properties or establish an annual charge based upon a uniform unit method; but, the charge shall be assessed in a fair and equitable manner. The annual charge shall be calculated to supplement other available funds as may be necessary to plan, construct, operate and maintain stormwater facilities and to conduct stormwater programs. The city, town or district may grant credits against the amount of the quarterly or annual charge to those property owners who maintain on-site functioning retention/detention basins or other filtration structures as approved by the stormwater utility, conservation commission, or other governmental entity with appropriate authority.

Amended by St.1961, c. 311; St.2004, c. 149, §§ 139, 140, eff. July 1, 2004.

Historical and Statutory Notes

St.1892, c. 245, § 1.
R.L.1902, c. 49, § 6.

§ 16A. Certificate of acceptance; effect; recordation

If the rates and charges due to a city, town, municipality, or sewer district, which accepts this section and sections sixteen B to sixteen F, inclusive, and by its clerk, files a certificate of such acceptance in the proper registry of deeds, for supplying or providing for a sewer system or rendering service or furnishing materials in connection therewith to or for any real estate at the request of the owner or tenant are not paid on or before their due date as established by local regulations, ordinances or by-laws, which due date shall be so established as to require payments at least as often as annually, such rates and charges, together with interest thereon and costs relative thereto, shall be a lien upon such real estate as provided in section sixteen B. The register of deeds shall record such certificate of acceptance in a book to be kept for the purpose, which shall be kept in an accessible location in the registry. Sections sixteen B to sixteen F, inclusive, shall also apply to a sewer district which has accepted sections sixteen A to sixteen F, inclusive, and whose clerk has so filed the certificate of acceptance. Wherever in said sections the words "board or officer in charge of the sewer department" or their equivalent appear, they shall also mean and include the officers exercising similar duties in any city, town or district. A fire or water district authorized to provide a sewer system shall, for the purposes of sections sixteen A to sixteen F, inclusive, be deemed to be a sewer district.

Added by St.1977, c. 586. Amended by St.1981, c. 440.

§ 16B. Effective date of sewer charge lien; termination; methods of collection and enforcement of rate or charge

Such lien shall take effect by operation of law on the day immediately following the due date of such rate or charge, and, unless dissolved by payment or abatement, shall continue until such rate or charge has been added to or committed as a tax under section sixteen C, and thereafter, unless so dissolved, shall continue as provided in section thirty-seven of chapter sixty; provided, however, that if any such rate or charge is not added to or committed as a tax under section sixteen C for the next fiscal year commencing after the inception of the lien under this section, then said lien shall terminate on October first of the third year following the year in which such charge becomes due.

Notwithstanding such lien any such overdue rate or charge may be collected through any legal means, including the shutting off of a sewer connection, which may be deemed advisable; provided, that after the termination of such a lien, no city, town or sewer district shall attempt to enforce, by shutting off the sewer connection, collection of such rate or charge from any person, not liable therefor, who has succeeded to the title or interest of the person incurring such rate or charge. All such rates and charges excluded by court decree under section seventy-six B of chapter sixty shall, to the extent that they were properly chargeable to the person owning, or to the tenant occupying, the premises for which such rates and charges were incurred, be recoverable from such person or tenant, as the case may be, in an action of contract or otherwise. If at the time of the entry of such decree such person or tenant is still the owner or tenant of the premises, whether through redemption or otherwise, such rates and charges to the extent that they were properly chargeable to him, may be enforced in any other manner provided or available for collection and enforcement of sewer connection rates and charges.

Added by St.1977, c. 586. Amended by St.1989, c. 469, § 2.

§ 16C. Certification of rate or charge to assessors; commitment as tax

If a rate or charge for which a lien is in effect under section sixteen B has not been added to or

committed as a tax and remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed by them under section fifty-three of chapter fifty-nine, the board or officer in charge of the sewer department, or the town collector of taxes, if applicable under section thirty-eight A of chapter forty-one, shall certify such rate or charge to the assessors, who shall forthwith add such rate or charge to the tax on the property to which it relates and commit it with their warrant to the collector of taxes as a part of such tax. If the property to which such rate or charge relates is tax exempt, such rate or charge shall be committed as the tax.

Added by St.1977, c. 586. Amended by St.1986, c. 557, § 81.

§ 16D. Application of other law; powers of tax collectors

Except as otherwise provided, the provisions of chapters fifty-nine and sixty shall apply, so far as pertinent, to all rates and charges certified to the assessors under section sixteen C. Without limiting the generality of the foregoing, upon commitment as a tax or part of a tax under said section sixteen C, all such rates and charges shall be subject to the provisions of law relative to interest on the taxes of which they become, or, if the property were not tax exempt would become, a part; and the collector of taxes shall have the same powers and be subject to the same duties with respect to such rates and charges as in the case of annual taxes upon real estate, and the provisions of law relative to the collection of such annual taxes, the sale or taking of land for the nonpayment thereof and the redemption of land so sold or taken shall, except as otherwise provided, apply to such rates and charges.

Added by St.1977, c. 586.

§ 16E. Remedies of aggrieved real estate owners

An owner of real estate aggrieved by a charge imposed thereon under sections sixteen A to sixteen F, inclusive, in addition to such remedy as he may have under section ten of chapter one hundred and sixty-five, may apply for an abatement thereof by filing a petition with the board or officer having control of the sewer department within the time allowed by law for filing an application for abatement of the tax of which such charge is, or, if the property were not tax exempt, would have been, a part, and if such board or officer finds that such charge is more than is properly due, a reasonable abatement shall be made; and except as otherwise provided herein, the provisions of chapter fifty-nine relative to the abatement of taxes by assessors shall apply, so far as applicable, to abatements hereunder. If such petition is denied in whole or in part, the petitioner may appeal to the appellate tax board upon the same terms and conditions as a person aggrieved by the refusal of the assessors of a city or town to abate a tax.

Added by St.1977, c. 586.

§ 16F. Recovery of real estate owner against tenants

An owner of real estate who, in order to prevent the imposition of a lien thereon or to discharge the same, has paid charges for sewer connections furnished to a tenant or other person who was bound to pay the same, may recover from such tenant or other person in an action of contract the amount of the charges so paid with all incidental costs and expenses.

Added by St.1977, c. 586.

§ 16G. Deferral of charges

In a city, town or district which accepts the provisions of this section, the board responsible for assessing charges for the use of the common sewers under section sixteen of chapter eighty-three or any other provision of law, shall, upon the application of the owner of the real property served by the common sewers, if such owner is receiving an exemption from property taxes under clause Forty-first A of section five of chapter fifty-nine with respect to such property, defer charges for said use of the common sewers. An application for deferral may be filed with said board within the time limit established for the filing of an application for exemption under said clause Forty-first A.

The board that imposes such charges shall notify the board of assessors of any deferral granted under the provisions of this section, and shall annually thereafter notify said board of assessors of any unpaid sewer charges to be added to the tax bill. Such charges shall be committed by the assessors along with the real estate taxes for each fiscal year, and abated along with such taxes, and secured by the statement of lien executed pursuant to said clause Forty-first A. Upon such qualification for deferral, no further application under this section need be filed in order to qualify for deferral of sewer charges in subsequent years. No additional

notice or statement of lien need be recorded or registered with respect to such deferred sewer use charges, but the amount of such deferred charges shall be listed on any certificate of liens issued under section twenty-three, twenty-three A or twenty-three B of chapter sixty. Whenever a person who has received an exemption under said clause Forty-first A is no longer eligible for such exemption, the board of assessors shall cease deferring sewer use charges added to the tax bill, and shall notify the board responsible for the assessment of such charges of the discontinuance of such deferral of said charges.

Interest shall be charged upon deferred sewer use charges at the same rate as interest on taxes deferred under said clause Forty-first A. The deferred charges, together with accrued interest shall be due and collectible at the same time and upon the same terms and conditions as taxes deferred under said clause Forty-first A.

The amount of sewer use charges deferred under this section, plus accrued interest, shall not be used in determining whether a taxpayer continues to be eligible for exemption under said clause Forty-first A.

Added by St.1988, c. 42, § 4.

§ 17. Payment for permanent sewer privileges

The aldermen of any city except Boston or a town in which main drains or common sewers are laid may determine that a person who uses such main drains or common sewers in any manner, instead of paying an assessment under section fourteen, shall pay for the permanent privilege of his estate such reasonable amount as the aldermen or the sewer commissioners, selectmen or road commissioners shall determine.

Historical and Statutory Notes

St.1878, c. 184, §§ 1, 2.
P.S. 1882, c. 50, §§ 8, 9.
R.L.1902, c. 49, § 7.
St.1918, c. 257, § 212.
St.1919, c. 5.
St.1920, c. 2.

§ 18. Method of assessment

The city council of a city or a town which itself is, or the officers of which are, entitled, under sections fourteen to seventeen, inclusive, or under any special act, to assess upon land the whole or a part of the cost of laying, making, maintaining or repairing main drains or common sewers, may determine that such assessments shall be made by two or more of the methods provided in said sections or special acts, and may determine what part of the expense or estimated average cost shall be paid under each method.

Historical and Statutory Notes

St.1892, c. 245, § 2.
R.L.1902, c. 49, § 8.

§ 19. Assessments; extension of time for payment

The aldermen of a city or the sewer commissioners, selectmen or road commissioners of a town may extend the time for the payment of such assessments upon land which is not built upon until it is built upon or for a fixed time; but interest at the rate of four per cent per annum shall be paid annually upon the assessment from the time it was made, and the assessment shall be paid within three months after such land is built upon or at the expiration of such fixed time.

Amended by St.1943, c. 252, § 4.

Historical and Statutory Notes

St.1892, c. 245, § 3.
R.L.1902, c. 49, § 9.
St.1918, c. 257, § 213.
St.1919, c. 5.
St.1920, c. 2.

§ 20. Fee for use of sewers

The owners of land or parts thereof not liable to assessment, or not in fact assessed, may use the common sewers for the disposal of their sewage from such land only on payment of such reasonable amount as the aldermen or the sewer commissioners, selectmen or road commissioners shall determine.

Historical and Statutory Notes

St.1892, c. 245, § 3.
R.L.1902, c. 49, § 10.

§ 21. Assessment on land abutting on more than one way

If land abuts upon more than one way, assessments for sewers based wholly or in part upon frontage shall be assessed upon the frontage upon one such way and upon so much of the frontage upon such other way as is not exempted by the board whose duty it is to make the assessment; and such board may exempt from assessment so much of the frontage upon such other way as they consider just and equitable.

Historical and Statutory Notes

St.1892, c. 245, § 5.
R.L.1902, c. 49, § 11.

§ 22. Assessment of sewers built by landowners

If an ordinance or by-law provides that any drain or sewer laid in any land or way, public or private, which is opened or proposed to be opened for public travel and accommodation shall be a main drain or common sewer, and such drain or sewer is laid in a private way or land at the expense of the owner thereof, his land shall not be assessed for such drain or sewer, except for the cost of connecting it with common drains or sewers already established.

Historical and Statutory Notes

St.1895, c. 227.
R.L.1902, c. 49, § 13.

§ 23. Cost of sewers; payment of portion by municipality

A town by vote of its town meeting or a city by vote of its board of aldermen or city council shall determine whether it shall pay the whole or a portion of the cost of laying out and constructing main drains or of a system or systems of sewerage and sewage disposal, and if a portion, what portion. If the town or city votes to pay less than the whole cost, in providing for the payment of the remaining portion of the cost of said system or systems the town or city may avail itself of any or all of the methods of payment authorized by law to a town or city, and the provisions of chapter eighty relative to the apportionment, division, reassessment, abatement and collection of assessments, to liens therefor and to interests thereon, shall apply to assessments made under this chapter. At the same meeting at which it determines that any portion of the cost is to be borne by the town or city, it may by vote determine by which of such methods the remaining portion of said cost shall be provided.

Amended by St.1964, c. 736, § 4; St.1975, c. 228.

Historical and Statutory Notes

St.1841, c. 115, § 5.
G.S.1860, c. 48, § 7.
P.S.1882, c. 50, § 11.
St.1892, c. 245, § 9.
R.L.1902, c. 49, §§ 26, 27.

§ 24. Assessment for particular sewers

The owner of any land benefited by the laying out of a particular sewer from the common sewer to the boundary of the way shall pay to the town for the permanent privilege of using the same such reasonable amount as the aldermen or the sewer commissioners, selectmen or road commissioners determine, which may be fixed at the estimated average cost of all such particular sewers within the territory for which a system of sewers has been built or adopted. The board or officers authorized to lay out sewers shall assess the cost of connecting private land with a common sewer under section three upon the land so connected, and may require that an applicant for a connection of his land with a sewer shall pay in advance an amount equal to the estimated assessment therefor, which shall be applied to the payment of the assessment, and the remainder, if any, shall be repaid to the applicant.

Historical and Statutory Notes

St.1892, c. 245, § 4.
St.1899, c. 319, §§ 2, 5.
St.1900, c. 112.
R.L.1902, c. 49, §§ 12, 32, 34.

§ 25. Establishment of sidewalks

The aldermen of a city or the selectmen or road commissioners of a town may, if in their judgment the public convenience so requires, establish sidewalks in the public ways thereof and determine the grade of each such sidewalk and the materials with which it shall be constructed, and may order the reconstruction of existing sidewalks. No such sidewalk shall be dug up or obstructed without the consent of the board or officer having charge of the maintenance and repair of public ways in a city, or the selectmen or road commissioners in a town. Each city and town shall provide a slanted curbing on sidewalks in its public ways at pedestrian crosswalks when new or replacement curbing is required at such locations.

Amended by St.1973, c. 288.

Historical and Statutory Notes

St.1855, c. 43, §§ 1, 2.
G.S.1860, c. 45, §§ 7, 8.
P.S.1882, c. 50, §§ 20, 21.
R.L.1902, c. 49, §§ 42 to 45.
St.1918, c. 257, § 218.
St.1919, c. 5.
St.1920, c. 2.

§ 26. Assessments for the construction or reconstruction of sidewalk

In the order for the construction of a new sidewalk or the reconstruction of a sidewalk with material of more permanent character than that with which it was originally constructed, the board making the order may provide for the assessment of a reasonable amount, not exceeding one half the

cost, upon the abutting estates. If an ordinance or by-law so provides, the total assessed upon any individual estate shall not exceed one per cent of the value thereof as fixed by the last preceding annual assessment for taxes.

Historical and Statutory Notes

St.1872, c. 303, §§ 1 to 4.
St.1874, c. 107, §§ 1, 2.
P.S.1882, c. 50, §§ 22 to 24.
St.1895, c. 444.
R.L.1902, c. 49, §§ 42 to 45.
St.1918, c. 257, § 218.

§ 27. Recording of statements; assessment liens

Whenever the aldermen of a city or the sewer commissioners, selectmen or road commissioners of a town lay out or determine to construct a sewer or drain in a public way, or in a way opened or dedicated to the public use which has not become a public way, or adopt an order for the establishment or reconstruction of a sidewalk for such a way, and assessments may be made or charges imposed under this chapter for the construction of such improvement or the use thereof, they shall forthwith cause to be recorded in the registry of deeds of the county or district in which such city or town is situated a statement of their action, which shall specify the ways in which such sewer, drain or sidewalk is located. All assessments made or charges imposed under this chapter upon land which abuts upon any such way in which such sewer, drain or sidewalk is located shall constitute a lien upon such land from the time such statement is recorded and all charges authorized by section sixteen shall from the time of assessment constitute a lien upon the land connected with the common sewer. Liens under this section shall continue for the same period and under the same conditions as a lien established under chapter eighty.
Amended by St.1943, c. 252, § 5.

Historical and Statutory Notes

G.S.1860, c. 48, § 5.
St.1878, c. 184, § 3.
St.1878, c. 249.
P.S.1882, c. 50, §§ 5, 10, 25.
St.1886, c. 210.
St.1891, c. 97.
St.1893, c. 380.
St.1895, c. 117.
St.1896, c. 236.
St.1897, c. 274.
St.1899, c. 319, §§ 3, 4.
R.L.1902, c. 49, §§ 23, 33.
St.1918, c. 257, §§ 215, 218.
St.1919, c. 5.
St.1920, c. 2.
St.1921, c. 486, § 20.

§ 28. Application of betterment law

The provisions of chapter eighty relative to the apportionment, division, reassessment, abatement and collection of assessments, and to interest, shall apply to assessments made under this chapter.

Historical and Statutory Notes

St.1918, c. 257, §§ 216, 218.
St.1919, c. 5.
St.1920, c. 2.

§ 29. Betterment assessments created by special act; duration of lien

Notwithstanding any provision in any special act to the contrary, any lien for sewer, drain or sidewalk assessments or for betterment assessments of any other nature created pursuant to the provisions of any special act shall continue in effect until the land subject to the lien has been alienated and the instrument alienating the same has been recorded and for such longer period as any special act may provide.
Added by St.1943, c. 252, § 3.

CHAPTER 85

REGULATIONS AND BY–LAWS RELATIVE TO WAYS AND BRIDGES

Selected section

Section

11E. Traffic law violations by bicyclist.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 11E. Traffic law violations by bicyclist

A police officer who observes a traffic law violation committed by a bicyclist may request the offender to state his true name and address. Whoever, upon such request, refuses to state his name and address or whoever states a false name and address or a name and address which is not his name and address in ordinary use, shall be punished by a fine of not less than $20 nor more than $50. An offender who refuses to state his true name and address may be arrested without a warrant for such refusal but no person shall be arrested without a warrant for any other traffic law violation committed while operating a bicycle. A police officer shall use the ticketing procedure described in chapter 90C to cite a bicyclist for a traffic law violation but the violation shall not affect the status of the bicyclist's license to operate a motor vehicle nor shall it affect the bicyclist's status in the safe driver insurance plan. When a citation is issued to a bicyclist, it shall be clearly indicated on the ticket that the violator is a bicyclist, and failure to do so shall be a defense to the violation.

The parent or guardian of a person under 18 years of age shall not authorize or knowingly permit that person to violate this section. A violation of this section by a person under 18 years of age shall not affect any civil right or liability nor shall the violation be a criminal offense. If the offender is under 16 years of age, the officer may give the notice to the parent or guardian of the offender.

All fines collected by a city or town pursuant to this section shall be used by the city or town for the development and implementation of bicycle safety programs.

Added by St.2009, c. 65, § 6, eff. Jan. 1, 2011.

CHAPTER 88

FERRIES, CANALS AND PUBLIC LANDINGS

Selected section

Section

14. Laying out or alteration of common landing places; erection and maintenance of structures thereon.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 14. Laying out or alteration of common landing places; erection and maintenance of structures thereon

In every city or town where the tide ebbs and flows there shall be provided on a tidal shore thereof at least one common landing place and where no common landing place exists the city council or board of selectmen shall lay out at least one common landing place and may from time to time alter the same, but the layout or alteration of such landing place shall not extend below low water mark. In any such city or town the city council or board of selectmen may, upon petition of ten or more voters of the city or town, lay out additional common landing places and alter the same or those already existing, but no layout or alteration of such landing place shall extend below low water mark. All the provisions of law relating to the laying out and alteration of town ways shall apply to the laying out or alteration of common landing places. Any person who is damaged in his property by such laying out or alteration may recover damages under chapter seventy-nine. In any city or town where a common landing place exists or where a layout or alteration is made in accordance with the provisions of this section, the city council or board of selectmen shall file a plan and a description of each such common landing place or layout or alteration with the city clerk or town clerk, with the county commissioners of the county where said city or town is located, and with the department of environmental management and shall record the same in the registry of deeds for said county. A city or town may erect and maintain structures on any such common landing place in keeping with the public nature thereof, but any such structures extending into tidewater shall be subject to the provisions of chapter ninety-one. The city council or board of selectmen shall make rules and regulations governing the operation and use of structures on a common landing place and may appoint a custodian thereof and fix his salary, or it may, on behalf of the city or town, lease said structures.

Amended by St.1956, c. 262; St.1991, c. 552, § 60.

Historical and Statutory Notes

St.1908, c. 606, §§ 1, 4.
St.1930, c. 164.

CHAPTER 90

MOTOR VEHICLES AND AIRCRAFT

Selected sections

Section

3½. Commonwealth residency factors; access to information in nonpublic records; certification of facts; motor vehicle registration misrepresentations; penalties and fines.

20A. Parking regulations; violations; notice to appear; failure to appear; adjudication by mail.

20A½. Cities of Boston and Cambridge; parking violations; tags; appearance; failure to appear; adjudication by mail.

Section

20C. Nature of proceedings under Secs. 20A and 20A½; fines.

20D. Tampering or destruction of parking tags; penalty.

20E. Liability of lessors of motor vehicles for parking violations.

49. Registration of federal certificates; fees; exceptions.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 3½. Commonwealth residency factors; access to information in nonpublic records; certification of facts; motor vehicle registration misrepresentations; penalties and fines

(a) Any person claiming to be a nonresident for purposes of section 3, shall be deemed to be a resident of the commonwealth during any period in which such person:

(1) obtained an exemption pursuant to clause Seventeenth, Seventeenth C, Seventeenth C 1/2, Seventeenth D, Eighteenth, Twenty-second, Twenty-second A, Twenty-second B, Twenty-second C, Twenty-second D, Twenty-second E, Thirty-seventh, Thirty-seventh A, Forty-first, Forty-first A, Forty-first B, Forty-first C, Forty-second or Forty-third of section 5 of chapter 59;

(2) obtained an exemption pursuant to section 5C of said chapter 59;

(3) filed a Massachusetts resident income tax return pursuant to chapter 62;

(4) obtained a rental deduction pursuant to subparagraph (9) of paragraph (a) of Part B of section 3 of chapter 62;

(5) declared in a home mortgage settlement document that the mortgaged property located in the commonwealth would be occupied as his principal residence;

(6) obtained homeowner's liability insurance coverage on property that was declared to be occupied as a principal residence;

(7) filed a certificate of residency and identified his place of residence in a city or town in the commonwealth in order to comply with a residency ordinance as a prerequisite for employment with a governmental entity;

(8) paid on his own behalf, or on behalf of a child or dependent for whom the person has custody, resident in-state tuition rates to attend a state-sponsored college, community college or university;

(9) applied for and received public assistance from the commonwealth for himself or his child or dependent of whom he has custody;

(10) has a child or dependent of whom he has custody who is enrolled in a public school in a city or town in the commonwealth, unless the cost of such education is paid for by him, such child or dependent, or by another education jurisdiction;

(11) is registered to vote in the commonwealth;

(12) obtained any benefit, exemption, deduction, entitlement, license, permit or privilege by claiming principal residence in the commonwealth; or

(13) is a resident under any other written criteria under which the commissioner of revenue may determine residency in the commonwealth.

(b) Notwithstanding any general or special law to the contrary, the custodian of any records referred to in subsection (a) that are not accessible to the general public shall provide, upon request, to the registrar of motor vehicles, the commissioner of revenue, the local board of assessors, or a local or state police officer, access to certain information contained therein solely for purposes of enforcing chapters 59, 60A, 64H, 64*I* and 90. The disclosure of information contained in such records referred to in paragraphs (3) and (4) of subsection (a) shall be made by the commissioner of revenue pursuant to this section and shall be limited to: the taxpay-

er's name; the taxpayer's primary place of residence or domicile; the type of return filed; the taxpayer identification number; the determination of whether the taxpayer took the rental deduction on his income tax return; and an explanation of the factors that indicated said taxpayer's residency within the commonwealth.

If records maintained by a custodian indicate that a person is deemed to be a resident under subsection (a), the custodian may certify in writing as to the facts contained in those records and the certification shall be prima facie evidence of the person's residency within the commonwealth in any proceeding involving enforcement of said chapters 59, 60A, 64H, 64*I* and 90, including any proceedings under subsection (c).

(c) Any person who improperly registers a motor vehicle or trailer in another state or misrepresents the place of garaging of the motor vehicle or trailer within the commonwealth, for purposes of evading the payment of motor vehicle excise, sales and use taxes or insurance premiums, or to reduce the amount of such payment, shall be punishable by a fine of not less than $200 nor more than $1,000 for each offense. For purposes of this section, each taxable year that a motor vehicle or trailer is improperly registered shall be considered a separate offense, but no more than 3 years shall be the subject of prosecution. The fines imposed pursuant to this section shall be divided as follows: 75 per cent of the fines shall be paid over to the treasury of the city or town in whose jurisdiction the motor vehicle is customarily garaged; and 25 per cent of the fines shall be paid over to the treasurer of the commonwealth to be deposited in the highway fund to offset costs associated with the implementation of this section. The Massachusetts Collectors and Treasurers Association, in conjunction with the treasurer of the commonwealth, shall report quarterly to the house and senate committee on ways and means the total amount of fines imposed and collected pursuant to this section.

As an alternative to criminal prosecution, violation of this section may be disposed of as a civil motor vehicle infraction in the amount of $500 under chapter 90C, fines recovered under this paragraph shall be divided as follows: 50 per cent of the fines shall be paid over to the treasury of the city or town in whose jurisdiction the motor vehicle is customarily garaged, of which not less than 40 per cent of the city or town share shall be appropriated to the police department in the city or town; and 50 per cent of the fines shall be paid over to the treasurer of the commonwealth to be deposited in the Highway Fund to offset costs associated with the implementation of this section.

Added by St.2002, c. 184, § 85. Amended by St.2003, c. 46, § 96, eff. July 31, 2003.

§ 20A. Parking regulations; violations; notice to appear; failure to appear; adjudication by mail

In any city or town accepting the provisions of this section, each city manager in a city having a Plan D or E form of charter or the mayor with the approval of the city council or board of aldermen in any other city or the town council or board of selectmen of a town shall designate or appoint a parking clerk, who may also perform other municipal functions except police functions. The parking clerk shall be directly responsible to said city manager, mayor, town council or board of selectmen and shall supervise and coordinate the processing of parking notices in such city or town. The parking clerk shall have the authority, subject to the approval of the city manager or mayor in a city or town manager or board of selectmen in a town, to hire or designate such personnel and organize such divisions as he may deem necessary or contract, by competitive bidding, for such services subject to appropriation to carry out the provisions of this section.

It shall be the duty of any police officer, except in cities and towns subject to the provisions of section twenty A½, who takes cognizance of a violation of any provision of any rule, regulation, order, ordinance or by-law regulating the parking of motor vehicles established by any city or town, forthwith to give to the offender a notice to appear before the parking clerk of the city or town wherein the violation occurred at any time during regular office hours, not later than twenty-one days after the time of said violation.

Said notice must be made in triplicate and one copy shall be affixed securely to the motor vehicle and shall contain, but shall not be limited to, the following information: the make, color, registration number and state of issuance of said registration number of the vehicle involved, the date, time and place of the violation, the specific violation charged and, if a meter violation, the number of said meter, the name and badge number of the officer and his division, a schedule of established fines, instructions for the return of the notice and a notice which reads as follows: This notice may be returned by mail, personally or by an authorized

person. A hearing may be obtained upon the written request of the registered owner. Failure to obey this notice within twenty-one days after the date of violation may result in the non-renewal of the license to drive and the certificate of registration of the registered owner.

Whenever it is not possible to deliver a copy of said notice to the offender at the time and place of the violation by affixing it to the motor vehicle, said copy shall be sent by the officer, or by his commanding officer or any person authorized by said commanding officer, in the case of a violation involving a motor vehicle registered under the laws of this commonwealth, within five days of the offense, and in the case of any motor vehicle registered under the laws of another state or country, within ten days thereof, exclusive, in either case, of Sundays and holidays, to the address of the registrant of the motor vehicle registered under the laws of this commonwealth, in the records of the registry of motor vehicles, or, in the case of a motor vehicle registered under the laws of another state or country, in the records of the official in such state or country having charge of the registration of such motor vehicle. Such notice mailed by the officer, his commanding officer, or the person so authorized, to the last address of such registrant as appearing as aforesaid, shall be deemed as sufficient notice, and a certificate of the officer or person so mailing such notice that it has been mailed in accordance with this section shall be deemed prima facie evidence thereof and shall be admissible in any judicial or administrative proceeding as to the facts contained therein. At or before the completion of each tour of duty the officer shall give to his commanding officer those copies of each notice of such a violation taken cognizance of during such tour which have not already been delivered or mailed by him as aforesaid. Said commanding officer shall retain and safely preserve one of such copies and shall, at a time not later than the end of the second business day of the city or town after said delivery or mailing, deliver another of such copies to the parking clerk before whom the offender has been notified to appear. The parking clerk shall maintain a docket of all such notices to appear.

Any person notified to appear before the parking clerk, as provided herein, may appear before such parking clerk or his designee and confess the offense charged, either personally or through an agent duly authorized in writing or by mailing to such parking clerk the notice and the fine provided herein, such payment to be made only by postal note, money order or check made out to the parking clerk. If it is the first violation subject to this section committed by such person in a particular city or town in the calendar year, the parking clerk shall dismiss the charge without the payment of any fine; if it is the second, third or fourth violation so committed in such city or town in the calendar year, payment to the parking clerk of a fine of five dollars for each such violation shall operate as a final disposition of the case; and if it is the fifth or subsequent violation so committed in such city or town in the calendar year, payment to the parking clerk of a fine of ten dollars for each such violation shall operate as a final disposition of the case; provided, however, that the provisions of this sentence shall not apply to any violation subject to this section committed in any city or town wherein the city council or board of aldermen, town council, board of selectmen, or traffic commission or traffic director having authority to promulgate traffic rules shall have established by municipal rule, regulation, ordinance or by-law a schedule of fines for such violations. The schedule of fines shall be uniform for the same offense committed in the same zone or district, if any, and shall not exceed $25 if paid within 21 days, $35 if paid thereafter but before the parking clerk reports to the registrar as provided below, and $50 if paid thereafter; provided, however, that the fine for the violation of parking a motor vehicle within a posted bus stop shall be $100. Notice affixed to a motor vehicle as provided in this section shall be deemed a sufficient notice, and a certificate of the officer affixing such notice that it has been affixed thereto, in accordance with this section, shall be deemed prima facie evidence thereof and shall be admissible in any judicial or administrative proceeding as to the facts contained therein. Whenever it becomes necessary to ascertain whether a person owning two or more motor vehicles is chargeable as such owner with a first, second, third, fourth, fifth or subsequent violation hereunder, such question shall, in the case of vehicles singly registered, be determined separately with respect to the particular vehicle involved in such violation and, in the case of vehicles subject to section five, with respect to the particular number plate or plates used on the vehicle involved in such violation at the time thereof.

Should any person notified to appear hereunder fail to appear and, if a fine is provided hereunder, to pay the same, or having appeared desire not to

avail himself of the benefits of the procedure established by this section, the parking clerk shall forthwith schedule the matter before a person hereafter referred to as a hearing officer, said hearing officer to be the parking clerk of the city or town wherein the violation occurred or such other person or persons as the parking clerk may designate. Written notice of the date, time and place of said hearing shall be sent by first-class mail to the registered owner. Said hearing shall be informal, the rules of evidence shall not apply and the decision of the hearing officer shall be final subject to judicial review as provided by section fourteen of chapter thirty A.

If any person fails to appear in accordance with said notice, the parking clerk shall notify the registrar of motor vehicles who shall place the matter on record and, upon receipt of two or more such notices, shall not renew the license to operate a motor vehicle of the registered owner of the vehicle or the registration of said vehicle until after notice from the parking clerk that all such matters have been disposed of in accordance with law. Upon such notification to the registrar, an additional twenty dollar charge, payable to the registrar of motor vehicles, shall be assessed against the registered owner of said vehicle. It shall be the duty of the parking clerk to notify the registrar forthwith that such case has been disposed of in accordance with law, provided however, that a certified receipt of full and final payment from the parking clerk of the city or town in which the violation occurred shall also serve as legal notice to the registrar that said violation has been so disposed of. The notice to appear provided herein shall be printed in such form as the registrar of motor vehicles may approve. The parking clerk shall distribute such notices to the commanding officer of the police department of the city or town upon request, and shall take a receipt therefor. The registrar shall approve such other forms as he deems appropriate to implement this section, and said forms shall be printed and used by the cities and towns.

If any person shall have failed to appear in accordance with five or more said notices, notwithstanding any notification to the registrar, the parking clerk may notify the chief of police or director of traffic or parking of said city or town that the vehicle involved in said multiple violations shall be removed and stored, or otherwise immobilized by a mechanical device, at the expense of the registered owner of said vehicle until such time as the matter has been disposed of in accordance with law.

As used in this section, the words "motor vehicle" shall, so far as apt, include trailer, semi-trailer and semi-trailer unit.

The provisions of this section shall apply to violations of rules and regulations relative to the use of parking areas subject to the control of the county commissioners adjacent to or abutting county buildings, and county commissioners are hereby authorized to make said rules and regulations.

Any person notified to appear before the parking clerk, as provided herein, without waiving his right to a hearing before the parking clerk or hearing officer as provided by this section, and also without waiving judicial review as provided by section fourteen of chapter thirty A, may challenge the validity of the parking violation notice and receive a review and disposition of the violation from the parking clerk or a hearing officer by mail. The alleged parking violator may, upon receipt of the notice to appear, send a signed statement explaining his objections to the violation notice as well as signed statements from witnesses, police officers, government officials and any other relevant parties. Photographs, diagrams, maps and other documents may also be sent with the statements. Any such statements or materials sent to the parking clerk for review shall have attached the persons' name and address as well as the ticket number and the date of the violation. The parking clerk or hearing officer shall, within twenty-one days of receipt of said material, review the material and dismiss or uphold the violation and notify, by mail, the alleged violator of the disposition of the hearing. If the outcome of the hearing is against the alleged violator, the parking clerk or hearing officer shall explain the reasons for the outcome on the notice. Such review and disposition handled by mail shall be informal, the rules of evidence shall not apply, and the decision of the parking clerk shall be final subject to any hearing provisions provided by this section or to judicial review as provided by section fourteen of chapter thirty A. Each parking violation issued shall carry a statement explaining the procedure to adjudicate the violation by mail.

Added by St.1934, c. 368, § 1. Amended by St.1935, c. 176; St.1938, c. 201; St.1949, c. 425, §§ 1 to 3; St.1951, c. 69; St.1952, c. 98; St.1952, c. 193, §§ 1, 2; St.1953, c. 249, § 1; St.1954, c. 302; St.1955, c. 386, §§ 1, 2; St.1955, c. 751, § 1; St.1956, c. 404; St.1960, c. 454; St.1961, c. 233, §§ 1 to 3; St.1961, c. 455, § 6; St.1962, c. 338, §§ 20, 21; St.1962, c. 420, § 1; St.1962, c. 786, §§ 1 to 5; St.1978, c. 478, § 39; St.1981, c. 351, § 115; St.1981, c. 746, §§ 1 to 5; St.1983, c. 233, § 62; St.1983, c. 459, § 1; St.1984, c. 189, § 63; St.1989, c. 204, § 1; St.1992, c. 133, § 445; St.2003, c. 46, § 97, eff. July 31, 2003; St.2008, c. 465, § 1, eff. April 7, 2009; St.2010, c. 454, § 44, eff. Jan. 14, 2011.

§ 20A½. Cities of Boston and Cambridge; parking violations; tags; appearance; failure to appear; adjudication by mail

In the cities of Boston and Cambridge and in any city or town which accepts the provisions of this section, each manager in a city having a Plan D or E form of charter or the mayor, with the approval of the city council or board of aldermen in any other city, or the town council or board of selectmen of a town shall designate or appoint a parking clerk. The parking clerk shall report to the council or aldermen of a city, the council or board of selectmen of a town and shall supervise and coordinate the processing of parking notices in such city or town. The parking clerk shall have the authority, after such authorization by the mayor and city council in a city or town council or selectmen in a town, to hire and designate such personnel as may be necessary or contract by competitive bid for such services, subject to appropriation, to implement the provisions of this section; provided, however, that such positions shall be filled in the city of Boston and Cambridge by granting preference to persons who had been employees of said cities in the fire, police or traffic crossing guard service, and all such positions in said city of Boston and Cambridge shall be subject to chapter thirty-one, and in no case in the city of Boston and Cambridge shall the amount expended for administration of this section exceed eleven per cent of the total amount of the annual receipts collected by the parking clerk.

It shall be the duty of every police officer who takes cognizance of a violation of any provision of any rule, regulation, order, ordinance or by-law regulating the parking of motor vehicles established for their respective city or town, forthwith to give the offender a notice, which shall be in tag form as provided in this section, to appear before the parking clerk of the city or town wherein the violation occurred at any time during regular office hours, not later than twenty-one days after the date of such violation. All tags shall be prepared in triplicate and shall be prenumbered.

Said tag shall be affixed securely to the motor vehicle and shall contain, but shall not be limited to, the following information: the make, color and registration number of the vehicle involved and the state of issuance of said registration number, the date, time and place of the violation, the specific violation charged and, if a meter violation, the number of said meter, the name and badge number of the officer and his division, a schedule of established fines, instructions for the return of the tag and a notice which reads: This notice may be returned by mail, personally or by an authorized person. A hearing may be obtained upon the written request of the registered owner. Failure to obey this notice within twenty-one days after the date of violation may result in the non-renewal of the license to drive and the registration of the registered owner.

At or before the completion of each tour of duty, the officer shall give to his commanding officer those copies of each notice of such violation taken cognizance of during such tour. Said commanding officer shall retain and safely preserve one of such copies and shall at a time no later than the beginning of the next business day of the city or town after receipt of such notice deliver another of such copies to the parking clerk before whom the offender has been notified to appear. The parking clerk shall maintain a docket of all such notices to appear.

Any person notified to appear before the parking clerk, as provided herein, may appear before such parking clerk, or his designee, and confess the offense charged, either personally or through an agent duly authorized in writing or by mailing to such parking clerk the notice accompanied by the fine provided therein, such payment to be made only by postal note, money order or check made out to the parking clerk. Payment of the fine established shall operate as a final disposition of the case. Notice affixed to a motor vehicle as provided in this section, shall be deemed a sufficient notice, and a certificate of the officer affixing such notice that it has been affixed thereto, in accordance with this section, shall be deemed prima facie evidence thereof and shall be admissible in any judicial or administrative proceeding as to the facts contained therein.

The traffic and parking commission of the city of Boston, the traffic commission or traffic director of any other city or town having such a commission or director with authority to promulgate traffic rules, the city council of any other city, and the board of selectmen of any other town, shall, from time to time, establish by rule or regulation a schedule of fines for violations subject to this section committed within such city or town; provided, however, that all such fines shall be uniform for the same offense committed in the same zone or district, if any; and provided, further, that the fine for the violation of the parking of motor vehicles with-

in ten feet of a fire hydrant shall not be more than one hundred dollars, and provided, further, that the fine for the violation of parking a motor vehicle within a posted bus stop shall be $100; and provided further, that any fine established under the provisions of this section for all other parking violations shall not exceed $50, if paid within 21 days, nor shall it exceed $55, if paid thereafter, but before the parking clerk reports to the registrar, as provided below and shall not exceed $75 if paid thereafter.

Should any person notified to appear hereunder fail to appear and, if a fine is provided hereunder, to pay the same, or having appeared desire not to avail himself of the benefits of the procedure established by this section, the parking clerk shall forthwith schedule the matter before a person hereafter referred to as a hearing officer, said hearing officer to be the parking clerk of the city or town wherein the violation occurred or such other person or persons as the parking clerk may designate. Written notice of the date, time and place of said hearing shall be sent by first-class mail to the registered owner. Said hearing shall be informal, the rules of evidence shall not apply and the decision of the hearing officer shall be final subject to judicial review as provided by section fourteen of chapter thirty A.

If any person fails to appear in accordance with said notice, the parking clerk shall notify the registrar of motor vehicles who shall place the matter on record and, upon receipt of two or more such notices, shall not renew the license to operate a motor vehicle of the registered owner of the vehicle or the registration of said vehicle until after notice from the parking clerk that all such matters have been disposed of in accordance with law. Upon such notification to the registrar, an additional twenty dollar charge, payable to the registrar of motor vehicles, shall be assessed against the registered owner of said vehicle. It shall be the duty of the parking clerk to notify the registrar forthwith that such case has been so disposed of in accordance with law, provided however, that a certified receipt of full and final payment from the parking clerk of the city or town in which the violation occurred shall also serve as legal notice to the registrar that said violation has been disposed of. The notice to appear provided herein shall be printed in such form as the registrar of motor vehicles may approve. The parking clerk shall distribute such notices to the commanding officer of the police department of the city or town upon request, and shall take a receipt therefor. The registrar shall approve such other forms as he deems appropriate to implement this section, and said forms shall be printed and used by the cities and towns.

If any person shall have failed to appear in accordance with five or more said notices, notwithstanding any notification to the registrar, the parking clerk may notify the chief of police or director of traffic and parking of said city or town that the vehicle involved in said multiple violations shall be removed and stored, or otherwise immobilized by a mechanical device, at the expense of the registered owner of said vehicle until such time as the matter has been disposed of in accordance with law.

As used in this section, the words "motor vehicle" shall, so far as apt, include trailer, semi-trailer and semi-trailer unit.

The provisions of this section shall apply to violations of rules and regulations relative to the use of parking areas subject to the control of the county commissioners adjacent to or abutting county buildings, and county commissioners are hereby authorized to make such rules and regulations. Said provisions shall also apply to violations of rules and regulations relative to the parking of motor vehicles established by any commission or body empowered to make such rules and regulations.

Any person notified to appear before the parking clerk, as provided herein, without waiving his right to a hearing before the parking clerk or hearing officer as provided by this section, and also without waiving judicial review as provided by section fourteen of chapter thirty A, may challenge the validity of the parking violation notice and receive a review and disposition of the violation from the parking clerk or a hearing officer by mail. The alleged parking violator may, upon receipt of the notice to appear, send a signed statement explaining his objections to the violation notice as well as signed statements from witnesses, police officers, government officials and any other relevant parties. Photographs, diagrams, maps and other documents may also be sent with the statements. Any such statements or materials sent to the parking clerk for review shall have attached the persons' name and address as well as the ticket number and the date of the violation. The parking clerk or hearing officer shall, within twenty-one days of receipt of said material, review the material and dismiss or uphold the violation and notify, by mail, the alleged violator of the disposition of the hearing. If the

outcome of the hearing is against the alleged violator, the parking clerk or hearing officer shall explain the reasons for the outcome on the notice. Such review and disposition handled by mail shall be informal, the rules of evidence shall not apply, and the decision of the parking clerk shall be final subject to any hearing provisions provided by this section or to judicial review as provided by section fourteen of chapter thirty A. Each parking violation issued shall carry a statement explaining the procedure to adjudicate the violation by mail.

Added by St.1981, c. 351, § 115. Amended by St.1981, c. 746, §§ 6 to 8; St.1983, c. 233, § 63; St.1983, c. 459, § 2; St.1984, c. 189, § 64; St.1988, c. 179; St.1989, c. 204, § 2; St.1992, c. 153, § 22; St.2004, c. 291, § 31, eff. Aug. 10, 2004; St.2008, c. 465, § 2, eff. April 7, 2009; St.2010, c. 454, § 45, eff. Jan. 14, 2011.

§ 20C. Nature of proceedings under Secs. 20A and 20A½; fines

Proceedings under sections twenty A or twenty A ½ of this chapter shall not be deemed criminal. Whenever there are outstanding against the registered owner of a motor vehicle more than five unpaid parking violations issued by a city or town, said owner or city or town may apply to the clerk of the division of the district or municipal court having jurisdiction to have the matter of these alleged violations treated criminally, and the district or municipal court shall take jurisdiction of the matter. The matter shall thereafter be deemed criminal and the procedures established for criminal cases be followed, provided, however, that the provisions of the second and third paragraphs of section thirty-five A of chapter two hundred and eighteen shall not apply to such cases. Any such fine imposed by the court shall not exceed double the maximum fine provided for in any city or town. Said fine imposed by the court shall be paid back to the said cities or towns where the violation occurred.

Added by St.1981, c. 351, § 115.

§ 20D. Tampering or destruction of parking tags; penalty

Whoever unlawfully tampers with or removes from a motor vehicle, or unlawfully changes, mutilates or destroys any notice affixed to such motor vehicle in accordance with section twenty A or twenty A½ shall be punished by a fine of not more than fifty dollars, or by imprisonment in jail for not more than one month, or by both such fine and imprisonment.

Added by St.1962, c. 786, § 6. Amended by St.1981, c. 351, § 115.

§ 20E. Liability of lessors of motor vehicles for parking violations

Notwithstanding the provisions of sections twenty A, twenty A½, or any other general or special law to the contrary concerning parking laws, if the registered owner of a motor vehicle involved in a parking violation is a person or entity engaged in the taxicab business or the business of leasing or renting motor vehicles, and such motor vehicle is under lease or rent or being operated for hire at the time of such violation, the provisions of this section shall be applicable, and the registered owner shall not be liable for any unpaid fines; provided, however, that such owner has complied with the procedures hereinafter set forth:

(a) The parking clerk shall give to the registered owner notice in writing of each violation in which a motor vehicle owned by such owner is involved, including the registration number of the vehicle, the state of issuance of such registration of the vehicle involved and the date, time and place of the violation.

(b) Within 45 days, the registered owner shall furnish to such parking clerk in writing the name and address of the lessee or rentee of such motor vehicle at the time of such violation; and if the lessee or rentee is also the operator, the lessee's or rentee's driver's license number, state of issuance of such driver's license and the lessee's or rentee's date of birth.

(c) The parking clerk shall thereupon issue a notice of violation to such lessee or rentee in the form prescribed by section twenty A or twenty A½.

(d) If such lessee or rentee does not appear in person or by writing as otherwise provided in section twenty A, twenty A½, or any other general or special law concerning parking violations, or make payment within twenty-one days from the date on which such notice is issued, the parking clerk shall notify the registrar as provided by the provisions of section twenty A, twenty A½, or any other general or special law concerning parking violations, and the clerk of the division of the district court department or Boston municipal court department of the trial court having jurisdiction. Upon notification by the parking clerk, the registrar shall suspend and shall not renew the license to operate a motor

vehicle of such lessee or rentee or suspend the right to operate of a lessee or rentee not licensed in this commonwealth; and the clerk of the district court of the trial court having jurisdiction shall forthwith issue a criminal complaint against the lessee or rentee and thereafter proceed against such lessee or rentee following the procedures established for criminal cases. The registrar shall remove any suspension and nonrenewal of license or right to operate made under the provisions of this section upon the payment in full to the parking clerk of the fine and penalty for such violation by the lessee or rentee.

(e) The provisions of section twenty A, section twenty A½, or any other general or special law concerning parking violations, shall be applicable to lessees and rentees of motor vehicles as provided herein.

(f) Any registered owner and parking clerk may, by agreement upon such terms and conditions as they may deem appropriate, provide for the transmission of the information referred to in subsections (a) and (b), on magnetic tape or in other computer readable format, in order to expedite completion of the foregoing provisions.

(g) The written notice referred to in subsection (a) shall be sent to the registered owner no later than two years after the date that such violation occurred; provided, however, that if such notice is sent within such two year period the parking clerk may proceed against the lessee or rentee, as provided herein, at any time after the sending of such notice.

(h) Upon a showing of cause, any fine may be reduced, dismissed, or otherwise disposed of by the parking clerk or any other designated governmental authority handling such parking violations, fines or penalties.

(i) Notwithstanding any general law or special law to the contrary, a surcharge of $.60 per lease or rental transaction shall be collected and paid pursuant to this section to the city or town within whose borders the rental or lease transaction was initiated as specified in the rental or lease agreement. A rental shall consist of a bailment of thirty-one consecutive days or less and a lease or leasing shall consist of a bailment of more than thirty-one consecutive days. Amounts received by a city or town under this section shall not be considered in the determination of the amount of any distribution of state assistance to such city or town.

Such surcharge amount shall be $.60 per rental or lease transaction as specified in the rental or lease agreement.

The money collected by a lessor or rentor pursuant to this section shall be paid monthly on or before the twentieth of the following month to the city or town where the rental or lease transaction was initiated and such surcharges may be added to the cost of the lease or rental.

For the purpose of determining compliance with payment of the surcharge, the city or town shall have the authority to examine the books, records and pertinent documents of any person or entity engaged in the taxicab business, or the business of leasing or renting motor vehicles; provided however, that said examination shall be conducted by the auditor or treasurer of the city or town or his designee. Whenever the amount of surcharge paid has been less than that required by subsection (i), the city or town may file a claim for surcharges underpaid or undercollected plus the statutory rate of interest on such charges. No payment for such underpayment or undercollection of surcharges shall be allowed unless the claim for such underpayment or undercollection is filed with the taxicab business or the business leasing or renting motor vehicles within two years of the date upon which the payment was due.

Whenever the amount of surcharge has been paid in error to the city or town or overcollected by the city or town, the rentor or lessor may file a claim for refund on surcharges overpaid or overcollected plus the statutory rate of interest on such surcharges. No refund shall be allowed unless the claim for refund is filed with the city or town within two years of the date upon which the payment was made.

Added by St.1973, c. 1108. Amended by St.1978, c. 571; St.1981, c. 351, § 115; St.1981, c. 746, § 9; St.1985, c. 696, § 1; St.2002, c. 222, §§ 1, 2; St.2003, c. 46, § 98, eff. July 31, 2003; St.2003, c. 140, §§ 24, 25, eff. Nov. 26, 2003.

§ 49. Registration of federal certificates; fees; exceptions

Each resident airman, and owner and operator, or owner or operator, of all aircraft and dealer in aircraft shall register the federal certificate of said airman, aircraft or dealer in aircraft in such manner as the commission may by regulation prescribe.

(a) Subject to the limitations of paragraphs (c) and (e), every person who pilots an aircraft within

the commonwealth shall register his federal airman's certificate with the commission and shall renew such registration annually thereafter for those years in which he pilots an aircraft within the commonwealth. The commission may charge for each such registration and for each renewal thereof, a fee, the amount of which shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven.

(b) Subject to the limitations of paragraphs (c) and (e), every person who operates an aircraft shall register the federal aircraft certificate of said aircraft with the commission during each period in which the aircraft is operated within the commonwealth. Every person who is a dealer in aircraft shall register his federal dealer's aircraft registration certificate with the commission. The commission may charge fees for each such registration and for each renewal thereof. Further, the commission may charge for the registration of each federal dealers aircraft registration certificate and for each aircraft in his possession operated solely for the purpose of sale or demonstration. The amounts of said fees and charges shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven. Such fees shall be in lieu of all personal property taxes on aircraft authorized by any law, ordinance or by-law. Registration certificates issued after expiration of the first six months of the annual registration period, as prescribed by the commission, shall be issued upon payment of fifty percent of the annual fee.

(c) Possession of the appropriate effective federal certificate, permit, rating or license relating to competency of the pilot or ownership and airworthiness of the aircraft, as the case may be, and the payment of the appropriate fee as set forth in this section, shall be the only requisites for registration of a pilot, an aircraft, or a dealer in aircraft.

(d) Aircraft registration fees shall be reimbursed to persons who surrender their certificates before the date of expiration in accordance with the following schedule:—

Before the first six months of the period, seventy-five per cent of said fee;

Before the first twelve months of the period, fifty per cent;

Before the first eighteen months of the period, twenty-five per cent.

(e) The provisions of this section shall not apply to:

(1) an aircraft owned by, and used exclusively in the service of, any government, including the government of the United States or of any state thereof, or political subdivision thereof, which is not engaged in carrying persons or property for commercial purposes;

(2) an aircraft registered under the laws of a foreign country;

(3) an aircraft owned by a non-resident and based in another state;

(4) an aircraft engaged principally in federally certificated scheduled airline operation having a certificate of public convenience and necessity issued by the Civil Aeronautics Board of the United States or its successor;

(5) a person piloting an aircraft engaged principally in federally certificated scheduled airline operation;

(6) a person piloting an aircraft owned by, and used exclusively in the service of, any government, including the government of the United States or of any state thereof, or political subdivision thereof, which is not engaged in carrying persons or property for commercial purposes;

(7) a person piloting an aircraft registered under the laws of a foreign country;

(8) a non-resident piloting aircraft within the commonwealth;

(9) a person operating model aircraft;

(10) a person piloting an aircraft equipped with fully functioning dual controls when a properly certificated pilot is in full charge of one set of said controls and such flight is solely for instruction or for the demonstration of said aircraft to a bona fide prospective purchaser.

Added by St.1939, c. 393, § 3. Amended by St.1964, c. 590; St.1965, c. 670, §§ 2 to 4; St.1980, c. 572, §§ 45, 46; St.1990, c. 150, §§ 279, 280.

CHAPTER 91

WATERWAYS

Selected section

Section
10A. Temporary moorings of floats or rafts; permits, issuance or refusal; review; public nuisances.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 10A. Temporary moorings of floats or rafts; permits, issuance or refusal; review; public nuisances

Notwithstanding any contrary provision of law, the harbormaster of a city or town or whomsoever is so empowered by said city or town may authorize by permit the mooring on a temporary basis of floats or rafts held by anchors or bottom moorings within the territorial jurisdiction of such city or town upon such terms, conditions and restrictions as he shall deem necessary. He shall act on applications for such permits within a period of fifteen days from receipt thereof.

A reasonable fee for such mooring permit, proportionate to the city or town's cost of overseeing mooring permits, may be imposed by the city or town or whoever is so authorized by the city or town, but no mooring fee shall discriminate on the basis of residence. Any mooring fee collected shall be deposited into and used in accordance with the purposes of a municipal waterways improvement and maintenance fund established pursuant to section 5G of chapter 40.

Any person aggrieved by a refusal to permit such temporary mooring, or by any condition or restriction imposed relative to such mooring, may appeal to the division of waterways of the department within thirty days after receiving notice of such refusal or of the imposition of such condition or restriction.

Said division shall review the circumstances resulting in such appeal and shall render a ruling either confirming the action of a harbormaster, setting such action aside, or amending such action and imposing its own conditions and restrictions as deemed necessary.

Nothing in this section shall be construed as authorizing the placement of floats or rafts and appurtenant anchors or bottom moorings on private flats of other than the applicant if objected to by the owner or owners thereof.

Actions by a harbormaster and/or the division under this section shall be subject to applicable laws administered by the division of motor boats, the division of marine fisheries, the United States Coast Guard and the United States Corps of Engineers.

Floats or rafts held by anchors or bottom moorings installed without permission from a harbormaster and/or said division shall be considered a public nuisance and may be removed by the harbormaster at the expense of the owner in the event he fails to remove same after notice in writing from the harbormaster.

For the purpose of this section, temporary shall mean for no longer than to the end of any given calendar year.

Added by St.1967, c. 543. Amended by St.1975, c. 706, § 124; St.2004, c. 291, § 33, eff. Aug. 10, 2004; St.2004, c. 352, § 38, eff. Sept. 17, 2004; St.2008, c. 451, § 61, eff. Jan. 5, 2009.

CHAPTER 94C

CONTROLLED SUBSTANCES ACT

Chapter 94C of the General Laws was added by St.1971, c. 1071, § 1.

Selected section

Section

47. Forfeiture of property.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 47. Forfeiture of property

(a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(1) All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(2) All materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing, or exporting any controlled substance in violation of this chapter.

(3) All conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal, or otherwise facilitate the manufacture, dispensing, distribution of or possession with intent to manufacture, dispense or distribute, a controlled substance in violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two *I*, thirty-two J, or forty.

(4) All books, records, and research, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this chapter.

(5) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two *I*, thirty-two J, or forty.

(6) All drug paraphernalia.

(7) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part, to commit or to facilitate the commission of a violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two *I*, thirty-two J or forty.

(8) All property which is used, or intended for use, as a container for property described in subparagraph (1) or (2).

(9) No forfeiture under this section shall extinguish a perfected security interest held by a creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.

(b) Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), (7) and (8) of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Property subject to forfeiture under subparagraph (1) of subsection (a) shall be destroyed, regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise.

(c) The court shall order forfeiture of all conveyances subject to the provisions of subparagraph (3) and of all real property subject to the provisions of subparagraph (7) of subsection (a) of this section, except as follows:

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party of privy to a violation of this chapter.

(2) No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of the commonwealth, or of any state.

(3) No conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances. Proof that the conveyance or real property was used to facilitate the unlawful dispensing, manufacturing, or distribution of, or possession with intent unlawfully to manufacture, dispense or distribute, controlled substances on three or more different dates shall be prima facie evidence that the conveyance or real property was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances.

(4) No conveyance or real property used to facilitate the unlawful manufacturing, dispensing, or distribution of, or the possession with intent unlawfully to manufacture, dispense, or distribute marihuana or a substance, not itself a controlled substance, containing any marihuana shall be forfeited if the net weight of the substance so manufactured, dispensed, or distributed or possessed with intent to manufacture, dispense or distribute, is less than ten pounds in the aggregate.

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture under the provisions of subparagraphs (3), (5), and (7) of subsection (a). Such petition shall be filed in the court having jurisdiction over said conveyance, real property, monies or other things of value or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. In all such suits where the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5), or (7) of said subsection (a). The owner of said conveyance or real property, or other person claiming thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (i). The court shall order the commonwealth to give notice by certified or registered mail to the owner of said conveyance, real property, moneys or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than two weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said conveyance, real property, moneys or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, said final order shall provide for disposition of said conveyance, real property, moneys or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance thereof shall be distributed as further provided in this section.

The final order of the court shall provide that said moneys and the proceeds of any such sale shall be distributed equally between the prosecuting district attorney or attorney general and the city, town or state police department involved in the seizure. If more than one department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the fifty percent equitably among these departments.

There shall be established within the office of the state treasurer separate special law enforcement trust funds for each district attorney and for the attorney general. All such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a trust fund and shall then be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement purposes as the district attorney or attorney general deems appropriate. The district attorney

or attorney general may expend up to ten percent of the monies and proceeds for drug rehabilitation, drug education and other anti-drug or neighborhood crime watch programs which further law enforcement purposes. Any program seeking to be an eligible recipient of said funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities, itemized expenditures, and board of directors of such program. Within ninety days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of drug rehabilitation, drug education, and other anti-drug or neighborhood crime watch programs.

All such moneys and proceeds received by any police department shall be deposited in a special law enforcement trust fund and shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police of such city or town, or the colonel of state police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

(e) Any officer, department, or agency having custody of any property subject to forfeiture under this chapter or having disposed of said property shall keep and maintain full and complete records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.

(f) (1) During the pendency of the proceedings the court may issue at the request of the commonwealth *ex parte* any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody, including but not limited to an order that the commonwealth remove the property if possible, and safeguard it in a secure location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account; and, that a substitute custodian be appointed to manage such property or a business enterprise. Property taken or detained under this section shall not be repleviable, but once seized shall be deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to the orders and decrees of the court having jurisdiction thereof. Process for seizure of said property shall issue only upon a showing of probable cause, and the application therefor and the issuance, execution, and return thereof shall be subject to the provisions of chapter two hundred and seventy-six, so far as applicable.

(2) There shall be created within the division of capital asset management and maintenance an office of seized property management to which a district attorney or the attorney general may refer any real property, and any furnishings, equipment and related personal property located therein, for which seizure is sought. The office of seized property management shall be authorized to preserve and manage such property in a reasonable fashion and to dispose of such property upon a judgment ordering forfeiture issued pursuant to the provisions of subsection (d), and to enter into contracts to preserve, manage and dispose of such property. The office of seized property management may receive initial funding from the special law enforcement trust funds of the attorney general and each district attorney established pursuant to subsection (d) and shall subsequently be funded by a portion of the proceeds of each sale of such managed property to the extent provided as payment of reasonable expenses in subsection (d).

(g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized by any police officer and summarily forfeited to the commonwealth.

(h) The failure, upon demand by a police officer of the person in occupancy or in control of land or premises upon which the species of plants are growing to produce an appropriate registration, or proof that he is a holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) The owner of any real property which is the principal domicile of the immediate family of the

owner and which is subject to forfeiture under this section may file a petition for homestead exemption with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition exempting from forfeiture an amount allowed under section one of chapter one hundred and eighty-eight. The value of the balance of said principal domicile, if any, shall be forfeited as provided in this section. Such homestead exemption may be acquired on only one principal domicile for the benefit of the immediate family of the owner.

(j) A forfeiture proceeding affecting the title to real property or the use and occupation thereof or the buildings thereon shall not have any effect except against the parties thereto and persons having actual notice thereof, until a memorandum containing the names of the parties to such proceeding, the name of the town where the affected real property lies, and a description of such real property sufficiently accurate for identification is recorded in the registry of deeds for the county or district where the real property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal or other final disposition is recorded by the court having jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such judgment, discontinuance, dismissal or other final disposition, and such certificate shall be recorded in the registry in which the original memorandum recorded pursuant to this section was filed.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, §§ 30, 31; St.1977, c. 556, §§ 1 to 3; St.1981, c. 669, § 3; St.1982, c. 132; St.1982, c. 650, §§ 16, 17; St.1984, c. 486, §§ 1, 2; St.1989, c. 162; St.1989, c. 653, §§ 73 to 80; St.1991, c. 412, §§ 66A, 67; St.1992, c. 133, §§ 455 to 459; St.1992, c. 289, §§ 6, 7; St.1996, c. 450, § 145; St.1998, c. 194, § 147.

CHAPTER 98

WEIGHTS AND MEASURES

Selected section

Section

29A. Civil citation for violation of weights and measures laws; appeal.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 29A. Civil citation for violation of weights and measures laws; appeal

As an alternative to initiating criminal proceedings for violations of the following weights and measures laws: section 115A of chapter 6; sections 92B, 96, 98, 174A, 176, 177, sections 181 to 183, inclusive, section 184E, sections 295A to 295K, inclusive, sections 299 and 303F of chapter 94; sections 19, 24, 25, 26, 31, 35, 42, 45, 48, 55, and 56A to 56D, inclusive, of chapter 98, any representative authorized by the director of standards and any person authorized under sections 34, 35 or 36 of this chapter may issue a civil citation for violations of said weights and measures laws in the amount of 75 per cent of the maximum criminal fine provided for said violation, to be paid within 21 days of the date of issuance of such citation.

Any person aggrieved by any citation issued pursuant to this section may appeal said citation by filing a notice of appeal with the director of standards within seven days of the receipt of the citation. Any such appellant shall be granted a hearing before a representative of the director of standards in accordance with chapter 30A. The hearing officer may affirm, vacate or modify the citation. Any person aggrieved by a decision of the hearing officer may file an appeal in the superior court pursuant to the provisions of said chapter 30A.

If a person fails to comply with the requirement set forth in any citation issued pursuant to this section, or shall fail to pay any civil penalty provided thereby within 21 days of the date of issuance of such citation, or within 30 days following the decision of the hearing officer if such citation has been appealed, excluding any time during which judicial review of the hearing officer's decision remains pending, the director of the division of standards may apply for a criminal complaint against such person for the violation, or may initiate a civil action in the district court.

All monies collected by a municipality or local consumer aid groups authorized by the director of standards under said civil citations, less any fee owed to the division of standards for contracted enforcement services pursuant to section 35, shall be retained by such municipality or local consumer aid group authorized by the director of standards, and shall be expended for the purposes of enforcement of item pricing and weights and measures laws. All monies collected by the division of standards under said civil citations shall be credited to the general fund.

Any citation issued by a municipality with a population of over 400,000 is exempt from this appellate procedure. All notices of appeals should be filed with said municipality's appellate board.
Added by St.1998, c. 295, § 24.

CHAPTER 107

MONEY AND REGISTRATION, ISSUANCE AND REDEMPTION OF BONDS AND OTHER SECURITIES, FACSIMILE SIGNATURES

Selected section

Section
45A. Use of facsimile signatures on checks drawn by treasurers of public bodies.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 45A. Use of facsimile signatures on checks drawn by treasurers of public bodies

The treasurer of a public body shall, without further authority than that contained in this section, have power to use a facsimile machine for the purpose of affixing his signature to any check drawn by him in the name and behalf of the public body on any bank or trust company having funds of the public body on deposit. Any such bank or trust company, in addition to any other rights which it may have as drawee, may, in the absence of connivance or neglect on its part, pay and charge to the account upon which it is drawn every check drawn on such bank or trust company which check (1) bears on the part of the public body as drawer, regardless of by whom affixed, a facsimile signature of its treasurer made from the same plate as a specimen facsimile furnished by such treasurer to such bank or trust company, and (2) is inoperative solely because such facsimile signature was affixed without the authority of such treasurer. The treasurer of the public body shall be accountable on his official bond to the public body for the amount of every such check so paid and charged which bears a date within the period he is in office, whether or not such check is so paid and charged within such period. As used in this section, the term "public body" shall be deemed to include the commonwealth, and every county, city, town, district, authority or other political subdivision or governmental unit; and the term "treasurer" shall be deemed to include any person authorized by statute, ordinance or by-law, or in other lawful manner, to sign or countersign checks for the purpose of disbursing funds of the public body.

Added by St.1953, c. 439.

CHAPTER 111

PUBLIC HEALTH

Selected sections

Section

27B. Regional health districts; regional board of health; powers and duties; administration; organization; management; accounts; rules and regulations.

27C. Reimbursement of regional health districts; qualification; formula for allocation of state funds for operating expenses.

125. Removal of nuisance by board.

127B. Dwellings unfit for human habitation; order to vacate or to abate nuisance; removal of occupants; demolition expense, lien; inspection reports; code violations; notices; enforcement proceedings, jurisdiction; appeal.

127B½. Petition for agreement to remove underground fuel storage tank, media contaminated by home heating oil or lead paint, or to provide proper service by a septic system; costs; authority to evict.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 27B. Regional health districts; regional board of health; powers and duties; administration; organization; management; accounts; rules and regulations

Two or more municipalities may, by vote of their respective boards of health and, in a city having a Plan E charter by the affirmative vote of a majority of all members of the city council, in other cities by vote of the city council and approval of the mayor, and by vote of a town at a regular annual town meeting, form a regional health district which shall consist of a regional board of health, a director of health and staff thereof. Towns and cities may, in a like manner, join a regional health district previously formed with the approval of the regional board of health of such district. The regional health district may have all the powers and may perform all the duties conferred upon, or exercised by, the boards of health and health departments of the constituent municipalities under any law or ordinance pertaining thereto, except in so far as the regional health district may, by majority vote, delegate certain powers and duties to the constituent municipalities. Notwithstanding the foregoing, a constituent municipality shall retain its legal authority under chapter 111 and section 6 of Article 2 of the Amendments to the Massachusetts Constitution, unless and until a municipality votes, by vote of its board of health and, in a city having a Plan E charter by the affirmative vote of a majority of all members of the city council, and in other cities by vote of the city council and approval of the mayor, and by vote of a town at a regular annual town meeting, to delegate part or all of its legal authority to the regional board of health.

The regional board of health, hereinafter referred to as the board, shall be comprised of at least 1 representative from each constituent municipality. Unless the board votes otherwise, each constituent municipality having a population greater than 10,000 shall have 1 additional representative to the board for every population unit of 10,000 or major fraction thereof beyond the first 10,000. In no instance shall there be more than 5 representatives from a single municipality on a board. Towns shall, at a town meeting, select or change the method of selecting their representative or representatives by any of the following methods: (a) by appointment of the board of health; (b) by appointment of the selectmen; (c) by vote at the annual town meeting; or (d) by any other method decided at the annual town meeting. In cities, such representatives shall be appointed by the mayor with the approval of the city council, or in cities having Plan E charters by the city manager, unless a definite mode of appointment is otherwise provided by the city charter. Each representative shall serve for a period of 3 years, except that at its initial organization the board shall decide the term of years for the first representatives who shall be elected or appointed to the board, so that thereafter approximately one-third of the representatives will be elected or appointed each year. Such representatives shall serve without compensation, but shall receive their necessary traveling expenses from the board while in the performance of their official duties. Representatives to the board may be reelected or reappointed for a maximum of 2 terms. The board shall meet annually and at such other times as it shall determine by its rules or when requested by the chairman of the board or the director of health.

Each board may make and adopt reasonable rules and regulations for the promotion of general health within the district not in conflict with law, ordinance, by-law or any fire, health or safety regulation. The powers of each district shall include, but not be limited to, the power to: (1) sue and be sued; (2) make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the health district; (3) make and from time to time amend and repeal rules and regulations relative to the operation of the district; (4) receive and expend funds; (5) apply for and receive grants from the commonwealth, the federal government and from other grantors, if the purpose of the grant is to improve public health; and (6) have such other powers as are necessary to properly carry out its powers as an independent entity of government.

Any constituent municipality that has been a member of the district for at least 3 years may withdraw from the district, by vote of its board of health and its respective legislative bodies passed prior to July first in any year, and the withdrawal shall be effective January first of the following year. In the event of the withdrawal of a town or city from the district, or in the event of dissolution of any district, the employees thereof, if originally employed by a municipality, shall automatically become employees in the same position they held in such municipality's board of health.

The board shall select a treasurer, who may be the treasurer of 1 of the constituent municipalities or such other treasurer as designated by the board, to act as treasurer for the district. For the faithful performance of his duties, the treasurer shall give bond, with a surety company authorized to transact business in the commonwealth, in such sums and upon such conditions as the board may require. The board shall, annually, in the month of December: (a) estimate the amount of money required to pay the cost and expense of the district for the following year; (b) fix and determine by a majority vote the proportion of such costs and expenses to be paid by the individual municipalities thereof during such year; and (c) certify the amount so determined for each municipality to the assessors thereof, who shall include such in the tax levies of each year, and each municipality shall appropriate such sum for the district. In apportioning the costs, the board, by a majority vote, may use any of the following formulae as a basis for its apportionment: (a) valuation, according to the latest state valuation, establishing the basis of apportionment of state and county taxes; (b) population, as determined by the most recent estimate by the state secretary, exclusive of universities and federal, state and county institutions; (c) a combined formula of valuation according to the latest state valuation and population as determined by the most recent estimate by the state secretary, exclusive of universities and federal, state and county institutions; or (d) any other method decided by majority vote of the board. Upon order of the board, the treasurer of each constituent municipality thereof shall, from time to time, subject to section 52 of chapter 41, pay to the treasurer of the district the amount certified by the board as the municipality's share of the cost and expenses of the district. The treasurer of the district shall disburse the money so received upon warrant approved by the director of health and signed by the chairman or vice-chairman of the board. The accounts of each district shall be audited annually by the bureau of accounts of the department of corporations and taxation, under sections 35, 40 and 41 of chapter 44.

The board shall appoint, and may reappoint, for a term of 3 years, a director of health, hereinafter referred to as the director. The board may remove the director for cause after proper notice and a public hearing. The director shall serve as secretary of the board, but shall have no vote. He shall be the executive and administrative head of the district and, may, with the approval of the board, designate 1 or more deputies and may appoint and employ, with like approval, such assistants as may be provided for in the budget. The director shall prepare and present annually to the board a report and a budget for its approval, together with such recommendations as he deems proper. The department of public health, in consultation with the department of environmental protection shall adopt regulations to set minimum qualifications for directors of health and other employees hired pursuant to this section.

The board shall adopt reasonable rules and regulations, for which notice and public hearing shall be given in the same manner and extent as required by section 37 of chapter 30 and section 2 of chapter 30A. The board shall also: (a) take evidence in appeals; (b) consider plans and appointments required by law; (c) hold hearings; and (d) discharge such other duties required by law, but the board shall have no administrative or executive functions. The board may delegate the holding of hearings to the director or his deputies. The board

may elect an executive committee consisting of its chairman, vice-chairman, secretary and such other members as its rules may determine. The executive committee shall have the authority to act for the board when the board is not in session.

All full-time and part-time incumbents of any office or position brought under the district at the time of its formation shall be transferred thereto without loss of civil service, retirement or other rights. Any transferred employee's compensation shall be fixed by the board at not less than the amount received by the employee during the fiscal year preceding the date such employee was transferred to the district. Any person hired pursuant to this section shall be hired in accordance with the merit system, personnel policies and compensation plans approved by the board. Any employee whose employment was governed by chapter 31 shall be transferred to the district with duties comparable to those previously performed by him and shall have all rights and privileges accruing to him from his previous position. Any employee whose employment was not governed by said chapter 31 shall be transferred to the district in a comparable position. The employee shall have all rights and privileges accruing to him from his previous position. If a new position is governed by said chapter 31 such employee shall be classified in the competitive civil service without examination. All positions and offices of the district, including the director, but excluding representatives to the board, shall be subject to the provisions of chapter 32. Ninety days after the organizational meeting of the board, all district positions and offices, except the director and the representatives to the board, not subject to chapter 31 at the time of the formation of the regional board of health, shall be placed within the civil service in the manner provided by said chapter 31 and the rules and regulations promulgated thereunder, and all positions and offices subsequently established by the board shall be subject to said chapter 31 and the rules and regulations thereof, unless the board by a majority vote within 90 days after its organizational meeting votes not to extend said chapter 31 to any or all of such eligible positions and offices. At any time after such a vote to exclude, the board may, by a majority vote, bring within said chapter 31 any or all positions and offices, in the manner set forth therein, except the director and the representatives to the board, which were excluded but which are still subject to the jurisdiction of the board. The wages and salaries of all offices and positions, including those subject to chapter 31, shall be determined by the board. The department in consultation with the department of environmental protection, shall establish by regulation minimum performance standards, including standards for inspection and enforcement, for basic programs of public health administration, personal health, laboratory services, health resources and other preventive health programs not inconsistent with law, as it finds necessary or desirable for the protection of public health.

For purposes of this section, the words "board of health" shall include any body politic or political subdivision of the commonwealth that acts as a board of health, public health commission or a health department for a municipality.

Added by St.1953, c. 600, § 1. Amended by St.1954, c. 273; St.1954, c. 681, § 8; St.1997, c. 19, § 18; St.2008, c. 529, § 1, eff. April 15, 2009.

§ 27C. Reimbursement of regional health districts; qualification; formula for allocation of state funds for operating expenses

(1) Each regional health district established under section 27B shall be entitled to reimbursement from the commonwealth, subject to appropriation, for expenditures incurred by it for initial capital outlays, including the acquisition, construction, improvement or renovation of any buildings or premises for the use of the district and any original furnishings and equipment therefor, but excluding the costs of supplies, salaries and other expenses for the ordinary maintenance and operation of the district. The department shall establish, by regulation, a formula for allocating state funds for initial capital outlays to each regional health district. In order to qualify for such reimbursement, a regional board of health shall, before incurring any expenses reimbursable under this section, submit to the commissioner an itemized statement of all proposed expenditures for such purposes. The commissioner shall examine such statement and shall notify such board to what extent, in his opinion, the proposed expenditures are reasonably necessary for the purposes of the regional health district and reimbursable hereunder, and the probable amount of reimbursement therefor. Within 3 months after the date of final payment for such capital outlays the board shall submit to the commissioner a certified statement of its actual expenditures for such purposes. If satisfied that the expenditures so certified are reimbursable and not unreasonable or excessive, the commissioner shall certify to the comptroller and the treasurer shall forthwith pay to such regional health district, from

any amounts appropriated therefor, the amount of such approved reimbursement.

(2) A formula shall be established, subject to appropriation, for allocating state funds for operating expenses to each regional health district. This formula shall include the requirement of municipal matching funds on a basis to be determined from the annual tax receipts of each participating city or town. Districts receiving state funds shall meet the performance standards and personnel qualifications adopted by the department of public health pursuant to section 27B. Such regional health districts may use additional funds, which they may secure from other sources. In the event that a city or town fails to appropriate its required matching funds from the annual tax receipts, such city or town shall be removed from the regional health district.

Added by St.1953, c. 600, § 1. Amended by St.1992, c. 403, § 24; St.2008, c. 529, § 1, eff. April 15, 2009.

§ 125. Removal of nuisance by board

If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall constitute a debt due the city or town upon the completion of the removal and the rendering of an account therefor to the owner, his authorized agent, or the occupant, and shall be recoverable from such owner or occupant in an action of contract.

The provisions of the second paragraph of section three A of chapter one hundred and thirty-nine, relative to liens for such debt and the collection of the claims for such debt, shall apply to any debt referred to in this section, except that the board of health shall act hereunder in place of the mayor or board of selectmen.

Amended by St.1970, c. 649, § 1.

Historical and Statutory Notes

St.1797, c. 16, § 11.
R.S.1836, c. 21, § 11.
St.1849, c. 211, § 5.
G.S.1860, c. 26, § 10.
P.S.1882, c. 80, § 23.
R.L.1902, c. 75, § 69.

§ 127B. Dwellings unfit for human habitation; order to vacate or to abate nuisance; removal of occupants; demolition expense, lien; inspection reports; code violations; notices; enforcement proceedings, jurisdiction; appeal

Upon a determination by the board of health, or, in the cities of Boston, Worcester and Cambridge, by the commissioner of housing inspection, after examination as provided in said code, that a building, tenement, room, cellar, mobile dwelling place or any other structure (a) is unfit for human habitation, (b) is or may become a nuisance, or (c) is or may be a cause of sickness or home accident to the occupants or to the public, it may issue a written order to the owner or occupant or any of them thereof, requiring the owner or occupant to vacate, to put the premises in a clean condition, or to comply with the regulations set forth in said code which are not being complied with or to comply with the rules and regulations adopted by the board of health as being necessary for the particular locality. The order shall be served in the same manner as is provided for the service of an order by section one hundred and twenty-four. A copy of such order shall be served upon any mortgagee or lienor of record by sending the same by registered mail, return receipt requested. If the owner or occupant refuses to comply with such order, the board of health may cause the premises to be properly cleaned at the expense of the owner or occupant, remove the occupant forcibly and close up the premises, or it may issue a written notice to the owner of such building, as appearing in the current records of the assessors of such town, setting forth the particulars of such unfitness and requiring that the conditions be remedied. If the person so notified fails within a reasonable time to remedy the conditions thus set forth, the superior court on a petition in equity brought by the board of health, shall have jurisdiction, to enforce the requirements of the board of health, by appointment of a receiver in accordance with the provisions of section one hundred and twenty-seven *I*, or by providing other equitable or legal relief. A copy of such written notice shall be served upon any mortgagee or lienor of record, by sending the same by registered mail, return receipt requested. No occupant of any residential premises may be removed, nor any order to vacate issued to any such occupant, unless the board of health has previously issued a written finding that the premises are unfit for human habitation. The board shall enter in said finding the material facts upon which such finding is based. No such finding shall be made before said occupants have been given written notice and an opportunity for a public hearing to be held not less than five days after receipt of such notice, unless the board of health determines in writing that the danger to the life or health of the occupants is so immediate that no delay may be permitted. In all other cases in which the board of

health determines that residential premises are not unfit for human habitation but that conditions within such premises in violation of said code or rules and regulations may not be remedied unless the occupants are removed therefrom, it may bring an action to remove the occupants from the premises pursuant to chapter two hundred and thirty-nine. In any such action, the court shall consider the matter according to the procedures and standards otherwise set forth in said chapter, and may grant a stay or stays of execution when appropriate. Premises closed up under the provisions of this section shall not be occupied as a human habitation without written permission of the board of health. If compliance with the regulations contained in said code has not been effected within one year from the date the premises have been so closed up the board of health may cause such structure to be demolished or removed; provided, however, that said board, upon written certification to it by the head of the local health department that immediate demolition or removal is essential to protect the health and safety of the public, may cause such demolition or removal within ninety days of said closing. A claim for the expense incurred by said board in cleaning the premises or in causing such structure to be demolished or removed shall constitute a debt due the city or town upon the completion of the work and the rendering of an account therefor to the owner of such structure, and shall be recoverable from such owner in an action of contract.

The provisions of the second paragraph of section three A of chapter one hundred and thirty-nine relative to liens for such debt and the collection of the claims for such debt, shall apply to any debt referred to in this section, except that the board of health, or, in the cities of Boston, Worcester and Cambridge, the commissioner of housing inspection, shall act hereunder in place of the mayor or board of selectmen.

Local boards of health shall enforce said code in the same manner in which local health rules and regulations are enforced but if any such local board fails after the lapse of a reasonable length of time to enforce the same, the department may in like manner enforce said code against any violator.

The superior court, housing court, and district court shall have jurisdiction in equity to enforce the provisions of said code.

A board of health and, in the cities of Boston, Worcester and Cambridge the commissioner of housing inspection, or local code enforcement agency may file a petition under section one hundred and twenty-seven H.

A copy of the report of any investigation or inspection of residential premises for violations of the code or other applicable laws, ordinances, by-laws, rules or regulations, and of any written order or notice issued by the board, shall be delivered personally or sent by first class mail to the occupants of all affected premises within seven days after the investigation or inspection of the premises or the issuance of the order or notice. A notice of the date, time and place of any administrative or court hearings scheduled by or known to the board relating to violations, including all referrals of violations to other government agencies, shall also be delivered or sent to the occupants. All investigation or inspection reports shall include the name of the inspector, and the date and time of the inspection or investigation; the date and time of any scheduled follow-up inspection; a description of the conditions constituting the violations, if any; a listing of the specific provisions of the code or other applicable laws, ordinances, by-laws, rules or regulations that appear to be violated; a determination by the official inspecting the premises whether each violation, or the cumulative effect of all violations, may endanger or materially impair the health, safety or well-being of any occupant or the public; a determination by said official whether any violations appeared to be substantially caused by the occupant or any person acting under his control; and a brief summary of the statutory remedies available to occupants of the affected premises. All reports, orders or notices relating to such inspections, investigations, or violations shall be public records, and shall be kept on file by the originating agency according to law.

Any person aggrieved by the failure of any inspectors or other personnel of the board or other code enforcement agency to inspect upon request any premises that the board or agency may lawfully inspect, or to find violations of law where such violations are claimed to exist, or to certify that such violations may endanger or materially impair the health, safety or well-being of the occupants, may appeal such failure to act to the full board or to the head of the agency. Such appeal shall be given a speedy hearing before said board or an impartial officer of said agency.

Added by St.1965, c. 898, § 3. Amended by St.1966, c. 78; St.1972, c. 522; St.1973, c. 295; St.1973, c. 920; St.1974, c. 298; St.1978, c. 104, §§ 2, 3; St.1983, c. 84, §§ 2, 3; St.1984, c. 189, § 81; St.1992, c. 133, § 462; St.1992, c. 407, §§ 1 to 4.

§ 127B½. Petition for agreement to remove underground fuel storage tank, media contaminated by home heating oil or lead paint, or to provide proper service by a septic system; costs; authority to evict

At any time prior to or during the course of proceedings conducted pursuant to section one hundred and twenty-seven B, resulting solely from contaminated media caused by a release of home heating oil or from the detection of dangerous lead paint levels, as determined under the authority of section one hundred and ninety-four, or in the event the state environmental code pursuant to section thirteen of chapter twenty-one A requires the repair, replacement or upgrade of a septic system the owner of a structure used for human habitation may petition the board of health in a city or town to make findings consistent with its authority under this chapter and may enter into an agreement, subject to appropriation, authorizing such board of health or such owner to cause the premises to be properly serviced by a septic system, removal of a residential underground fuel storage tank, removal of contaminated media caused by a release of home heating oil or to have removed any dangerous levels of lead paint, as determined under the authority of section one hundred and ninety-four, at the owners expense. An owner who enters into such an agreement shall be responsible for all expenses incurred by the board of health, directly or indirectly, or required by the board of health and incurred by the owner for such repairs, replacement, or upgrade of a septic system, removal of a residential underground fuel storage tank, removal of contaminated media caused by a release of home heating oil or removal of dangerous levels of lead paint. A notice of such agreement shall be recorded as a betterment and be subject to the provisions of chapter eighty relative to the apportionment, division, reassessment and collection of assessment, abatement and collections of assessments, and to interest; provided, however, that for purposes of this section, such lien shall take effect by operation of law on the day immediately following the due date of such assessment or apportioned part of such assessment and such assessment may bear interest at a rate determined by the city or town treasurer by agreement with the owner at the time such agreement is entered into between the board of health and the property owner. In addition to remedies available under chapter eighty, the property owner shall be personally liable for the repayment of the total costs incurred by the city or town under this section; provided, however, that upon assumption of such personal obligation to a purchaser or other transferee of all of the original owners interest in the property at the time of conveyance and the recording of such assumption, the owner shall be relieved of such personal liability.

Any costs incurred under the provisions of this section may be funded by an appropriation or issuance of debt, provided that any debt incurred shall be subject to the provisions of chapter forty-four and shall not exceed twenty years.

Any appropriation or borrowing by the city or town for purposes contained within this section shall not be included for the purpose of computation of the levy or borrowing limits otherwise imposed upon such city or town by the general laws.

An agreement between an owner and a board of health in a city or town pursuant to this section shall not be considered a breach of limitation or prohibition contained in a note, mortgage or contract on the transfer of an interest in property.

A board of health in a city or town acting pursuant to the provisions of this section shall have the same authority as set forth in section one hundred and twenty-seven B to institute an action for eviction. Any such action by the board of health shall not otherwise impair the rights or obligations of the occupants or owner with respect to each other.

Notwithstanding any provision of chapter 183A to the contrary, the organization of unit owners of a condominium may petition the board of health in a city or town to enter into a betterment agreement pursuant to this section to finance the repair, replacement or upgrade of a septic system serving a unit, one or more of which is used for human habitation provided that such system comprises part of the common areas and facilities. Such agreement shall: (i) be approved by a majority of the unit owners benefited by the repair, replacement or upgrade of the septic system or any combination of such septic system improvements; (ii) include an identification of the units and unit owners subject to the agreement and the percentages, as set forth in the master deed, of the undivided interests of the respective units in the common area and facilities; and (iii) include a statement by an officer or trustee of the organization of unit owners certifying that the required number of unit owners have approved the agreement. As between the affected unit owners and the city or town, such

certification shall be conclusive evidence of the authority of the organization of unit owners to enter into the agreement. A notice of such agreement shall be recorded as a betterment in the registry of deeds or registry district of the land court where the master deed is recorded and shall be otherwise subject to the provisions of chapter 80 as provided for in this section. The assessment under such agreement may be charged or assessed to the organization of units owners but shall not constitute an assessment of common expenses. Instead, the allocable share of the assessment, prorated on the basis of the percentage interests of the benefited units in the common areas and facilities, shall attach as a lien only to the units identified in the recorded notice and benefited by the repair, replacement or upgrade of the septic system or any combination of such septic system improvements and the owners of such units shall also be personally liable for their allocable share of the assessment as provided for in this section. Words defined in section 1 of said chapter 183A and used in this paragraph have the same meanings as appearing in said chapter 183A.

Added by St.1994, c. 60, § 116. Amended by St.1996, c. 151, § 259; St.1998, c. 194, § 152; St.1998, c. 463, §§ 86, 87; St.2008, c. 453, §§ 1, 2, eff. April 5, 2009.

CHAPTER 114

CEMETERIES AND BURIALS

Selected sections

Section

15. Appropriation for enclosing and improving cemetery; sale or conveyance of burial rights; disposition of proceeds.
19. Deposits for care and improvement of burial places or lots; records; investment of deposits.
25. Gifts or bequests for cemeteries; investment of funds; disposition of proceeds of sales of lots or burial rights.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 15. Appropriation for enclosing and improving cemetery; sale or conveyance of burial rights; disposition of proceeds

Towns may appropriate money for enclosing any cemetery lawfully provided by them or for constructing paths and avenues and embellishing the grounds therein, and may establish all necessary rules relative thereto consistent with law. They may lay out such cemetery into lots, and shall set apart a suitable portion as a public burial place for the use of the inhabitants, free of charge. They may sell and convey to any person, resident or nonresident, the exclusive right of burial and of erecting tombs and cenotaphs upon any lot and of ornamenting the same, upon such terms and conditions and subject to such regulations as they shall prescribe. Upon the conveyance of a burial lot, a town: (1) shall assign a number to such lot; (2) shall cause a marker to be installed thereon which indicates such number; (3) shall give a written notification to the purchaser of such lot, or his agent, which notification specifies the location and number of such lot; and (4) may charge the purchaser of such lot a reasonable fee for the cost of such marker and its installation. Towns shall maintain records concerning the location and numbering of such lots, which records shall be open to the public. The proceeds of such sales shall be paid into the town treasuries, be kept separate from other funds, and be appropriated to reimburse the towns for the cost of the land, its care, improvement and embellishment, or the enlargement of the cemetery.

Amended by St.1997, c. 191, § 2.

Historical and Statutory Notes

St.1828, c. 107.
R.S.1836, c. 15, § 12.
G.S.1860, c. 18, § 10.
St.1877, c. 69, § 7.
P.S.1882, c. 82, § 15.
R.L.1902, c. 78, § 16.
St.1909, c. 279.

§ 19. Deposits for care and improvement of burial places or lots; records; investment of deposits

A city or town may receive, hold and apply any funds, money or securities deposited with the treasurer thereof for the preservation, care, improvement or embellishment of any public or private burial place situated therein, or of burial lots situated in such burial places. Such funds, money or securities shall be entered upon the books of the treasurer, and held in accordance with ordinances or by-laws relative thereto. A city or town may pass ordinances or by-laws consistent with law, necessary for the purposes of this section. Each treasurer shall invest such deposits under his control to insure a maximum income from such deposits. Upon the receipt of a deposit for the preservation, care, improvement or embellishment of individual lots in public burial places, said treasurer shall so inform the city or town clerk, who shall record the facts relating to such deposit in the margin of his records of said lots.

Amended by St.1948, c. 550, § 48; St.1981, c. 565.

Historical and Statutory Notes

St.1870, c. 225, §§ 1 to 3.
P.S.1882, c. 82, § 17.
St.1884, c. 186.
R.L.1902, c. 78, § 18.

§ 25. Gifts or bequests for cemeteries; investment of funds; disposition of proceeds of sales of lots or burial rights

A town in which cemetery commissioners are chosen may receive gifts or bequests for maintaining cemeteries or cemetery lots, which shall be paid into the town treasury and, with the accounts thereof, shall be kept separate from the other money and accounts of said town. The town treasurer shall invest all such funds in accordance with the stipulations, if any, accompanying them; otherwise

he shall invest them as ordered by said commissioners and pay the income therefrom upon their order or with their approval. The proceeds of sales of lots or rights of burial in such cemeteries shall be paid into the town treasury and be appropriated to reimburse the town for the cost of the land, its care, improvement and embellishment, or the enlargement of the cemetery.

Amended by St.1934, c. 85, § 1; St.1989, c. 309.

Historical and Statutory Notes

St.1890, c. 264, § 4.
R.L.1902, c. 78, § 24.

CHAPTER 115

VETERANS' BENEFITS

Selected section

Section

15. Audit of accounts of districts.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 15. Audit of accounts of districts

The director of accounts in the department of corporations and taxation shall cause an audit to be made annually of the accounts of all districts organized under the authority of section ten and for such purpose he, and his duly accredited agents, shall have access to all necessary papers, books and records. The expenses incurred for said audits shall be paid primarily by the commonwealth. Said director shall apportion the cost of each audit among the several municipalities comprising the district on the basis of the taxable valuation of said municipalities as last established by the general court for state and county taxes, and submit the amounts of each apportionment to the state treasurer, who shall issue his warrant requiring the assessors of the cities and towns which comprise the district to assess a tax to the amount so apportioned, and such amount shall be collected and paid to the state treasurer as provided by section twenty of chapter fifty-nine.

Added by St.1948, c. 415.

CHAPTER 121A

URBAN REDEVELOPMENT CORPORATIONS

Chapter 121A of the General Laws was added by St.1945, c. 654, § 1.

Selected section

Section

10. Exemption from taxation and assessments; valuation; appeals; annual payment; additional tax and project approval procedure.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 10. Exemption from taxation and assessments; valuation; appeals; annual payment; additional tax and project approval procedure

For a period of fifteen years after the organization of any such corporation, such corporation and all its real and personal property, including all real and personal property leased by it from a housing authority or from a redevelopment authority or from a city or town or a corporation wholly owned or controlled by a city or town, shall be exempt from taxation and from betterments and special assessments; and for such period any such corporation shall not be required to pay any tax, excise, or assessment to or for the commonwealth or any of its political subdivisions; provided, however, that notwithstanding the foregoing provisions of this section, any such corporation shall be required to pay (1) the excises and sums respectively prescribed by this section and section fifteen; (2) excises assessed under chapter sixty A and acts in amendment thereof or addition thereto; and (3) excises imposed by chapter sixty-four A and acts in amendment thereof or addition thereto; and provided, further, that nothing in this section shall be construed to prevent any such corporation which enters into a contract under section fourteen from agreeing therein to make, or from making pursuant thereto, payments in lieu of betterments or special assessments.

Notwithstanding the foregoing provisions of this section, the assessors of every city or town in which real or tangible personal property exempted by this section from taxation under chapter fifty-nine is situated on January first of any year shall, on or before March first in such year, determine and certify to the commissioner of revenue and to the corporation organized under this chapter which owns or leases such property the fair cash value of such property as of January first in such year. On or before the first day of April then next ensuing, or within thirty days after the receipt of the certification of valuation from the assessors, whichever is later, such corporation, if aggrieved by such valuation, may appeal therefrom to the appellate tax board. Said board shall hear and decide the subject matter of such appeal and give notice of its decision to the commissioner of revenue, the assessors and the corporation; and, except as provided in section thirteen of chapter fifty-eight A, such decision shall be final and conclusive.

During the period of fifteen years after the organization of a corporation under this chapter, such corporation shall pay in each calendar year to the commonwealth with respect to its corporate existence at any time within the preceding calendar year an excise equal to the sum of the following: namely, an amount equal to five per cent of its gross income in such preceding calendar year, from all sources, and an amount equal to ten dollars per thousand upon the valuation determined as hereinbefore provided to be the fair cash value as of January first in the year in which the excise becomes payable of all real and tangible personal property of such corporation, including all real and tangible personal property leased by it which is exempted by this section from taxation under chapter fifty-nine; provided, that the excise payable in any year shall not be less than the amount which the city or town would receive for taxes, at the rate for such year, upon whichever of the following valuations is the lesser: (*a*) the valuation upon which the aforesaid amount equal to ten dollars per thousand is computed; or (*b*) the average of the assessed valuations of the land and all buildings and other things erected thereon or affixed thereto on the three assessment dates, in the case of land purchased, taken or leased by such corporation from a housing authority, redevelopment authority, city, town or corporation wholly owned or controlled by a city or town, next preced-

ing the acquisition of the land by such housing authority, redevelopment authority, city, town or wholly owned or controlled corporation, and in the case of all other land purchased, taken or leased by a corporation organized under this chapter, next preceding the acquisition thereof by such corporation, the assessed valuation for each assessment date being reduced by all abatements, if any. As used herein, the phrase "rate for such year" shall be the rate established by the city or town with respect to the fiscal year commencing during the calendar year for which a return is filed by the corporation.

Any plan for a project may provide that the project may be developed in separate stages, and such stages may be varied from time to time with the approval of the housing board. Whenever a project shall be developed in stages, any excise payable with respect to corporate existence in a calendar year ending before construction of the last stage of the project is completed, shall be computed as though each stage constituted a separate project owned by a separate corporation.

All provisions of chapter sixty-two C relative to the administration of taxes shall, so far as pertinent and consistent, be applicable to the excise imposed by this section. Said excise shall be paid to the commissioner of revenue at the time provided for filing the return required by section twelve of chapter sixty-two C. Said excise shall be distributed, credited and paid to the city or town where the project of the corporation is located.

Real estate acquired by a corporation organized under this chapter by lease from any person other than a housing authority, redevelopment authority, city, town or corporation wholly owned or controlled by a city or town, shall be subject to taxation in the same manner and to the same extent as if such real estate where[1] wholly owned and occupied by a private person; but so long as the period of fifteen years from the organization of such corporation has not expired and the leasehold estate continues to be held by such corporation, all buildings and other things erected by such corporation on, or affixed by such corporation to, any land acquired by such corporation by such lease shall, for the purposes of this chapter and of chapter fifty-nine, be deemed to be tangible personal property of such corporation. Real estate acquired by lease as aforesaid shall be excluded in making determinations and computing the excise under this section, except that the assessed valuation of all buildings and other things erected thereon or affixed thereto on the three assessment dates next preceding acquisition by such lease shall be included in computing the average valuation under clause (*b*) of the third paragraph of this section.

Notwithstanding any other provisions of this chapter or of any other law, the assessors of the city or town in which a project is to be located may, and upon the request of the housing board they shall determine for the purposes of this section the maximum fair cash value of any proposed project or of any stage or stages thereof. Such determination may be made prior to the construction of the project or of any stage or stages thereof on the basis of the plan for such project, stage or stages. Whenever any such determination shall have been made, the fair cash value of the real estate and tangible personal property of the corporation shall in no event be valued for the purposes of this section in an amount exceeding such maximum fair cash value, except upon a showing that the corporation has acquired real estate or tangible personal property not included in the plan upon which such maximum fair cash value was based, and in such event any such excess valuation shall be limited to the value of such additional real estate and tangible personal property.

All such information, as submitted to the department of revenue and the appellate tax board by such corporation and the assessors of every such city or town, shall be filed with the housing board and in the office of the assessor of the city or town in which the project is located, and, upon request, shall be made available by said department of revenue and by the housing board to any person in accordance with the twenty-sixth clause of section four of chapter seven.

For the purposes of this section, "gross income" shall mean payments actually made by persons for the right to reside in or occupy any portion or all of the project and shall not be deemed to include any payments made by any governmental unit to or on behalf of such corporation or to or on behalf of any tenant of such corporation which are in addition to such payments actually made by such tenant.

The fifteen year period of exemption from taxation provided in this section may be extended as herein provided with respect to a project authorized under this chapter for an additional period of time, provided, however, that the original fifteen year period and any additional period shall not exceed, in the aggregate, forty years. The granting of any such extension and the duration thereof

shall be based upon the amenities established or to be established in the project area and shall be determined in accordance with rules and regulations from time to time promulgated by the housing board. Said rules and regulations shall detail the nature, quality and quantity of various amenities any one or more of which, if established within the project authorized under this chapter, would significantly contribute to the utility or distinctiveness of the project and shall further stipulate the maximum period and minimum period of extension of exemption from taxation applicable to each such amenity. In determining the duration of the applicable extension period for the purposes of the rules and regulations, the housing board shall consider, among other things, the effect the amenity may have on a project with respect to additional project costs or loss of project revenue.

The schedule of amenities as shall be specified in the rules and regulations, upon which an extension may be granted, shall include, but not necessarily be limited to: (a) housing for persons of low and moderate income; (b) housing or facilities designed for the servicing of the specific needs of handicapped persons; (c) facilities designed for the servicing of the specific needs of learning disabled children; (d) commercial or industrial development which will result in the employment of minority persons or of persons residing in or near the project; (e) restoration or rehabilitation of structures or sites of architectural or historic merit, when such structures or sites are in the National Register of Historic Places or are in the Inventory of Historic Assets of the Commonwealth and when they are certified by the Massachusetts Historical Commission, and when any such registered or certified structures or sites are coupled with the development of facilities which contribute to public understanding the appreciation of their significance; (f) provisions for open space; (g) provisions for recreational or community public facilities; (h) provisions for the incorporation of significant architectural features in the construction and design of the project and (i) provisions for the incorporation of unusual features of construction or design to overcome a factor which contributed to the project being a blighted open area.

The rules and regulations required by this section shall be adopted and may be amended by the housing board only after said board has held a public hearing. Said hearing shall be conducted by the housing board pursuant to the provisions of section two of chapter thirty A except that, and in addition to the notice requirements thereof, the housing board shall, at least thirty-five days prior to the public hearing, send notice of said hearing to: (a) all corporations authorized to undertake a project under provisions of this chapter; (b) any applicant seeking authorization to undertake a project under provisions of this chapter; and (c) the mayor, city council and planning board in cities, and the selectmen and planning board in towns, in which corporations have been authorized to undertake projects or in which applicants seek authorization to undertake projects thereunder. The housing board may rely upon its records in satisfying the notice requirements of this paragraph.

Applications for an extension period shall only be made to the housing board at the time initial authority and approval is sought, except, however, application may be made within ten years after the initial authority and approval is granted provided that such application seeks an extension period based on the establishment of amenities within a portion of a project, the use of which was undesignated at the time of the granting of such initial authority and approval; and excepted further, that in the event of future amendment or change of the rules and regulations promulgated pursuant to this section, application may be made at any time, by a corporation authorized under this chapter, after such amendment or change is in force and effect, provided however, that any such application seeks an extension, the grant of which shall be consistent with any amended or changed rule or regulation then in force and effect.

Applications for an extension period submitted to the housing board pursuant to this section shall be transmitted for public hearing and determination in the same manner as provided for the application for approval of a project under this chapter, provided, however, that if such application for an extension period is submitted as part of an original application for project approval, such application shall be heard and determined in conjunction with the original application.

Subject to the provisions of this section and the rules and regulations of the housing board adopted as provided herein, an application for an extension period may be approved or disapproved, or disapproved with recommended changes which, if made, would warrant approval. In granting approval of such application, the approving authority shall specify the number of years of extension of exemption from taxation granted. If the application is disapproved with recommended changes,

the applicant may amend its application for extension of the period of tax exemption in accordance with such suggested changes and resubmit the application as amended to the approving authority. The approving authority may approve or disapprove the application as amended without further public hearing, unless, in its opinion, the proposed changes materially affect the cost of the project, the revenue accruing to the city or town therefrom, or the period of exemption from taxation granted to the project pursuant to this section, in which event the approving authority shall hold a further public hearing in accordance with the provisions of this chapter applicable to an original application.

Any corporation authorized under this chapter proposing (a) a project or portion thereof of housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statutes whether built or operated by any public agency or any non-profit or limited dividend organization including a project or portion thereof financed under the provisions of chapter seven hundred and eight of the acts of nineteen hundred and sixty-six, as amended, or (b) a project or portion thereof of low and moderate income housing to be financed in whole or in part by funds made available by the federal or state government or any instrumentality thereof or by any mortgage or mortgage bonds insured or guaranteed by the federal housing commissioner or the administrator of veterans' affairs or any other instrumentality of the federal or state governments shall receive with respect to such projects or portions thereof, an initial fifteen year period of tax exemption as provided by section ten and shall receive an additional period of tax exemption equal to twenty-five years.

Added by St.1945, c. 654, § 1. Amended by St.1953, c. 647, § 3; St.1956, c. 640, § 4; St.1969, c. 540, § 1; St.1975, c. 76; St.1975, c. 119, § 1; St.1975, c. 827, § 7; St.1976, c. 415, § 94; St.1978, c. 514, §§ 196 to 198.

[1] So in enrolled bill.

CHAPTER 121B

HOUSING AND URBAN RENEWAL

Chapter 121B of the General Laws was added by St.1969, c. 751, § 1.

Selected sections

Section

16. Exemption from taxation for real estate and tangible personal property of operating agency; revaluation or reassessment of real property; payments in lieu of taxes.
20. Development, acquisition and operating costs; relocation payments; losses; appropriation and payment by city.
21. Indebtedness limitation.
22. Emergency finance board; permission to incur indebtedness.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 16. Exemption from taxation for real estate and tangible personal property of operating agency; revaluation or reassessment of real property; payments in lieu of taxes

The real estate and tangible personal property of an operating agency including houses constructed by a housing authority on private land in rural areas under the provisions of section twenty-seven shall be deemed to be public property used for essential public and governmental purposes and shall be exempt from taxation and from betterments and special assessments; provided, that in lieu of such taxes, betterments and special assessments, a city or town in which an operating agency holds real estate used or to be used in connection with such a project may determine a sum to be paid to the city or town annually in any year or period of years, such sum to be in any year not in excess of the amount that would be levied at the current tax rate upon the average of the assessed value of such real estate, including buildings and other structures, for the three years preceding the year of acquisition thereof, the valuation for each year being reduced by all abatements thereon.

Whenever a city or town in which such real estate is located shall have made a general revaluation or reassessment of its real property for purposes of taxation, the valuation of such real estate shall be determined by the assessors of said city or town as of January first, in the year succeeding such revaluation or reassessment, by dividing the amount of the payment authorized by this section for the year last preceding the revaluation by the residential class tax rate of said city or town for the year of the revaluation, so that the payment with respect to such land shall remain substantially the same as that made prior to such revaluation or reassessment. The operating agency, if aggrieved by the determination of the assessors, may within six months after written notice thereof appeal to the appellate tax board.

Such a city or town may, however, agree with such an operating agency upon the payments to be made to the city or town as herein provided or such agency may make and such city or town may accept such payments, the amount of which shall not in either case be subject to the foregoing limitation. The last paragraph of section six and all of section seven of chapter fifty-nine shall, so far as apt, be applicable to payments under this section.

Nothing in this chapter shall be construed to prevent the taxation to the same extent and in the same manner as other real estate is taxed, of real estate acquired by an operating agency for an urban renewal project and sold by it, or of the leasehold interests and buildings and other structures belonging to private individuals or corporations on land acquired by it; provided, however, that real estate so acquired by an operating agency and sold or leased to an urban redevelopment corporation or other entity operating under chapter one hundred and twenty-one A, or to an insurance company or savings bank or group of savings banks operating under said chapter, shall be taxed as provided in said chapter and not otherwise; and provided, further, that nothing in this chapter or in chapter fifty-nine shall be construed to require a city or town to impose a tax on the leasehold of real estate owned by an operating agency and leased by it beyond any amount which the city or town and the operating agency have agreed to be the payment in lieu of taxes hereunder.

Added by St.1969, c. 751, § 1. Amended by St.1981, c. 552; St.1982, c. 620; St.1987, c. 518, § 4.

§ 20. Development, acquisition and operating costs; relocation payments; losses; appropriation and payment by city

A city or town in which an operating agency has been organized may raise and appropriate, or may borrow, or may agree with such agency or with the federal government or the commonwealth to raise and appropriate or to borrow, in aid of such agency, such sums as may be necessary for:—

(1) defraying all the development, acquisition and operating costs of a clearance, urban renewal, community renewal, relocation, rehabilitation or low-rent housing project within such city or town; or

(2) defraying such part of the development, acquisition and operating costs of any such project to which either the federal government, pursuant to federal legislation, or any other source has rendered or has agreed to render financial assistance, as will not be met by loans other than temporary loans or by contributions or grants other than annual or other contributions and grants in the nature of reimbursement from the federal government or from any such other source; and for

(3) the making of relocation payments by such agency; and

(4) repaying any loss which the city or town has agreed to bear and which is incurred as a result of the early taking, acquisition or clearance of land not used for urban renewal purposes.

Added by St.1969, c. 751, § 1.

§ 21. Indebtedness limitation

Indebtedness authorized under section twenty shall be outside the limit of indebtedness prescribed in section ten of chapter forty-four, and shall be payable within twenty years and otherwise subject to sections sixteen to twenty-seven, inclusive, of said chapter forty-four, except that in the case of indebtedness authorized under clause (1) or clause (2) of section twenty, the first principal payment may be made within five years and the last within twenty-five years of the date of the bonds or notes issued for the Serial Loan. The total amount of indebtedness of any city or town outstanding at any one time under clause (3) of section twenty alone shall not exceed one half of one per cent, and under clauses (1), (2) and (4) combined of said section twenty shall not in any city with a population over one hundred and fifty thousand exceed seven per cent of its equalized valuation and in any other city exceed six per cent of its equalized valuation.

Added by St.1969, c. 751, § 1. Amended by St.1973, c. 834; St.1975, c. 641.

§ 22. Emergency finance board; permission to incur indebtedness

So long as the emergency finance board, established under section one of chapter forty-nine of the acts of nineteen hundred and thirty-three, is in existence, no city or town shall, without the approval of said board, incur indebtedness for any of the purposes of this chapter which would cause the total amount of its indebtedness for such purposes then outstanding to exceed two and one half per cent of its equalized valuation. If said emergency finance board shall cease to exist, a commission consisting of the attorney general, the state treasurer and the director of the bureau of accounts in the department of corporations and taxation shall exercise the powers given to said emergency finance board by this section and section twenty-four. Said board or commission, as the case may be, shall hold a public hearing upon any matter submitted to it under this section if requested in writing to do so by twenty-five taxable inhabitants of such city or town within three days after the submission of such matter.

Added by St.1969, c. 751, § 1.

CHAPTER 131

INLAND FISHERIES AND GAME AND OTHER NATURAL RESOURCES

Selected section

Section

40. Removal, fill, dredging or altering of land bordering waters.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 40. Removal, fill, dredging or altering of land bordering waters

No person shall remove, fill, dredge or alter any bank, riverfront area, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow or swamp bordering on the ocean or on any estuary, creek, river, stream, pond, or lake, or any land under said waters or any land subject to tidal action, coastal storm flowage, or flooding, other than in the course of maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and other telecommunication services, without filing written notice of his intention to so remove, fill, dredge or alter, including such plans as may be necessary to describe such proposed activity and its effect on the environment and without receiving and complying with an order of conditions and provided all appeal periods have elapsed. Said notice shall be filed by delivery in hand to the conservation commission or its authorized representative or by certified mail, return receipt requested, to said commission, or, if none, to the board of selectmen in a town or the mayor of a city in which the proposed activity is to be located. Upon such filing, the receipt of such notice shall be acknowledged in writing on the face thereof and shall include the time and date so received. A person delivering said notice by hand shall be given a receipt in writing acknowledging the time and date of such filing. Copies of such notice shall be sent at the same time by certified mail to the department of environmental protection. To defray state and local administrative costs each person filing such a notice shall pay a filing fee, determined on a sliding scale basis by the commissioner of administration after consultation with the secretary of environmental affairs. Fifty percent of any filing fee in excess of twenty-five dollars shall be made payable to the department of environmental protection, in a manner to be determined by the commissioner of environmental protection, at the same time as the copies of the notice are sent to the department of environmental protection. The remainder of said fee shall be made payable to the city or town; provided, that said remainder shall be expended solely by the local conservation commission for the performance of its duties under this chapter and shall accompany the copy of the notice sent to the city or town. No such notice shall be sent before all permits, variances, and approvals required by local by-law with respect to the proposed activity, which are obtainable at the time of such notice, have been obtained, except that such notice may be sent, at the option of the applicant, after the filing of an application or applications for said permits, variances, and approvals; provided, that such notice shall include any information submitted in connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the environment. Upon receipt of any notice hereunder the department of environmental protection, hereinafter called the department, shall designate a file number for such notice and shall send a notification of such number to the person giving notice to the conservation commission, selectmen or mayor to whom the notice was given. Said notification shall state the name of the owner of the land upon which the proposed work is to be done and the location of said land.

Any person filing a notice of intention with a conservation commission shall at the same time give written notification thereof, by delivery in hand or certified mail, return receipt requested, to all abutters within one-hundred feet of the property line of the land where the activity is proposed, at the mailing addresses shown on the most recent applicable tax list of the assessors, including, but not limited to, owners of land directly opposite said proposed activity on any public or private street or way, and in another municipality or across a body of water. Said notification shall be at the applicant's expense, and shall state where copies of the

notice of intention may be examined and obtained and where information regarding the date, time and place of the public hearing may be obtained. Proof of such notification, with a copy of the notice mailed or delivered, shall be filed with the conservation commission.

Within twenty-one days of the receipt by a conservation commission of a written request made by any person and sent by certified mail, said commission shall make a written determination as to whether this section is applicable to any land or work thereon. When such person is other than the owner, notice of any such determination shall also be sent to the owner.

The term "applicant" as used in this section shall mean the person giving notice of intention to remove, fill, dredge or alter.

The term "person" as used in this section shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof, administrative agency, public or quasipublic corporation or body, or any other legal entity or its legal representative, agents or assigns.

The term "bogs" as used in this section shall mean areas where standing or slowly running water is near or at the surface during a normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with sphagnum moss (*Sphagnum*) and where the vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all, of the following plants or groups of plants: aster (*Aster nemoralis*), azaleas (*Rhododendron canadense* and *R. viscosum*), black spruce (*Picea mariana*), bog cotton (*Eriophorum*), cranberry (*Vaccinium macrocarpon*), high-bush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), laurels (*Kalmia angustifolia* and *K. polifolia*), leatherleaf (*Chamaedaphne calyculata*), orchids (*Arethusa, Calopogon, Pogonia*), pitcher plants (*Sarracenia purpurea*), sedges (*Cyperaceae*), sundews (*Droseraccae*), sweet gale (*Myrica gale*), white cedar (*Chamaecyparis thyoides*).

The term "coastal wetlands", as used in this section, shall mean any bank, marsh, swamp, meadow, flat or other lowland subject to tidal action or coastal storm flowage.

The term "freshwater wetlands", as used in this section, shall mean wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters.

The term "swamps", as used in this section, shall mean areas where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily include all of the following plants or groups of plants: alders (*Alnus*), ashes (*Fraxinus*), azaleas (*Rhododendron canadense* and *R. viscosum*), black alder (*Ilex verticillata*), black spruce (*Picea mariana*), button bush (*Cephalanthus occidentalis*), American or white elm (*Ulmus americana*), white Hellebore (*Veratrum viride*), hemlock (*Tsuga canadensis*), highbush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), cowslip (*Caltha palustris*), poison sumac (*Toxicodendron vernix*), red maple (*Acer rubrum*), skunk cabbage (*Symplocarpus foetidus*), sphagnum mosses (*Sphagnum*), spicebush (*Lindera benzoin*), black gum tupelo (*Nyssa sylvatica*), sweet pepper bush (*Clethra alnifolia*), white cedar (*Chamaecyparis thyoides*), willow (*Salicaceae*).

The term "wet meadows", as used in this section where ground water is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all, of the following plants or groups of plants: blue flag (*Iris*), vervain (*Verbena*), thoroughwort (*Eupatorium*), dock (*Rumex*), false loosestrife (*Ludwigia*), hydrophilic grasses (*Gramincae*), loosestrife (*Lythrum*), marsh fern (*Dryopteris thelypteris*), rushes (*Juncaceae*), sedges (*Cyperaceae*), sensitive fern (*Onoclea sensibilis*), smartweed (*Polygonum*).

The term "marshes", as used in this section, shall mean areas where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the

following plants or groups of plants: arums (*Araceae*), bladder worts (*Utricularia*), bur reeds (*Sparganiaceae*), button bush (*Cephalanthus occidentalis*), cattails (*Typha*), duck weeds (*Lemnaceae*), eelgrass (*Vallisneria*), frog bits (*Hydrocharitaceae*), horsetails (*Equisetaceae*), hydrophilic grasses (*Gramineae*), leatherleaf (*Chamaedaphne calyculata*), pickerel weeds (*Pontederiaceae*), pipeworts (*Eriocaulon*), pond weeds (*Potamogeton*), rushes (*Juncaceae*), sedges (*Cyperaceae*), smartweeds (*Polygonum*), sweet gale (*Myrica gale*) water milfoil (*Halcragaceae*), water lilies (*Nymphaeaceae*), water starworts (*Callitrichaceae*), water willow (*Decodon verticillatus*).

The term "Densely developed areas", as used in this section shall mean, any area of ten acres or more that is being utilized, or includes existing vacant structures or vacant lots formerly utilized as of January first, nineteen hundred and forty-four or sooner for, intensive industrial, commercial, institutional, or residential activities or combinations of such activities, including, but not limited to the following: manufacturing, fabricating, wholesaling, warehousing, or other commercial or industrial activities; retail trade and service activities; medical and educational institutions; residential dwelling structures at a density of three or more per two acres; and mixed or combined patterns of the above. Designation of a densely developed area is subject to the secretary of the executive office of environmental affair's approval of a city or town's request for such designation. Land which is zoned for intensive use but is not being utilized for such use as of January first, nineteen hundred and ninety-seven or which has been subdivided no later than May first, nineteen hundred and ninety-six shall not be considered a densely developed area for the purposes of this chapter.

The term "Mean annual high-water line", as used in this section, shall mean with respect to a river, the line that is apparent from visible markings or changes in the character of soils or vegetation due to the prolonged presence of water and which distinguishes between predominantly aquatic and predominantly terrestrial land. The mean high tide line shall serve as the mean annual high water line for tidal rivers.

The term "River", as used in this section, shall mean a natural flowing body of water that empties to any ocean, lake, or other river and which flows throughout the year.

The term "Riverfront area", as used in this section, shall mean that area of land situated between a river's mean annual high-water line and a parallel line located two hundred feet away, measured outward horizontally from the river's mean annual high-water line. This definition shall not create a buffer zone, so-called, beyond such riverfront area. Riverfront areas within municipalities with (i) a population of ninety thousand or more persons or (ii) a population density greater than nine thousand persons per square mile, as determined by the nineteen hundred and ninety federal census; (iii) that are within densely developed areas as defined herein; (iv) land in Waltham between the Charles river on the north, and the Crescent street and Pine street on the south, and the intersection of the Charles river and a line extended from the center line of Walnut street on the west, and the railroad right-of-way now or formerly of the Boston and Maine Railroad on the east; or (v) property located in the town of Milton shown on Milton assessors Map G, Block 56, Lot 13, located on 2 Granite Avenue shall be defined as that area of land situated between a river's mean annual high-water line and a parallel line located twenty-five feet away, measured outward horizontally, from the river's mean annual high-water line. The riverfront area shall not include land now or formerly associated with historic mill complexes including, but not limited to, the mill complexes in the Cities of Holyoke, Taunton, Fitchburg, Haverhill, Methuen and Medford in existence prior to nineteen hundred and forty-six and situated landward of the waterside facade of a retaining wall, building, sluiceway, or other structure existing on the effective date of this act. The riverfront area shall not apply to any mosquito control work done under the provisions of clause (36) of section five of chapter forty, of chapter two hundred and fifty-two or of any special act or to forest harvesting conducted in accordance with a cutting plan approved by the department of environmental management, under the provisions of sections forty to forty-six, inclusive, of chapter one hundred and thirty-two; and shall not include any area beyond one hundred feet of river's mean annual high water mark: in which maintenance of drainage and flooding systems of cranberry bogs occurs; in which agricultural land use or aquacultural use occur; to construction, expansion, repair, maintenance or other work on piers, docks, wharves, boat houses, coastal engineering structures, landings, and all other structures and activities subject to licensing or permitting under chapter ninety-one and its regulations; provided that

such structures and activities shall remain subject to statutory and regulatory requirements under chapter ninety-one and section forty of chapter one hundred and thirty-one or is the site of any project authorized by special act prior to January first, nineteen hundred and seventy-three.

The term "Riverfront area boundary line", as used in this section, shall mean the line located at the outside edge of the riverfront area.

The conservation commission, selectmen or mayor receiving notice under this section shall hold a public hearing on the proposed activity within twenty-one days of the receipt of said notice. Notice of the time and place of said hearing shall be given by the hearing authority at the expense of the applicant, not less than five days prior to such hearing, by publication in a newspaper of general circulation in the city or town where the activity is proposed and by mailing a notice to the applicant and to the board of health and the planning board of said city or town. The conservation commission and its agents, officers and employees and the commissioner of environmental protection and his agents and employees, may enter upon privately owned land for the purpose of performing their duties under this section. No conditions shall be imposed, nor shall any determination be rendered by a conservation commission, in reference to this section, unless the conservation commission meets with a quorum present.

If after said hearing the conservation commission, selectmen or mayor, as the case may be, determine that the area on which the proposed work is to be done is significant to public or private water supply, to the groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish, to the protection of wildlife habitat or to the protection of fisheries or to the protection of the riverfront area consistent with the following purposes: to protect the private or public water supply; to protect the ground water; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect the fisheries, such conservation commission, board of selectmen or mayor shall by written order within twenty-one days of such hearing impose such conditions as will contribute to the protection of the interests described herein, and all work shall be done in accordance therewith. If the conservation commission, selectmen or mayor, as the case may be, make a determination that the proposed activity does not require the imposition of such conditions, the applicant shall be notified of such determination within twenty-one days after said hearing. Such order or notification shall be signed by the mayor or a majority of the conservation commission or board of selectmen, as the case may be, and a copy thereof shall be sent forthwith to the applicant and to the department.

If a conservation commission has failed to hold a hearing within the twenty-one day period as required, or if a commission, after holding such a hearing has failed within twenty-one days therefrom to issue an order, or if a commission, upon a written request by any person to determine whether this section is applicable to any work, fails within twenty-one days to make said determination, or where an order does issue from said commission, the applicant, any person aggrieved by said commission's order or failure to act, or any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which said land is located, may, by certified mail and within ten days from said commission's order or failure to act, request the department of environmental protection to determine whether the area on which the proposed work is to be done is significant to public or private water supply, to the groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish, to the protection of wildlife habitat or to the protection of fisheries or to the protection of the riverfront area consistent with the following purposes: to protect the private or public water supply; to protect the ground water; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect the fisheries. The commissioner of environmental protection or his designee also may request such a determination within said ten days. The party making any such request shall at the same time send a copy thereof by certified mail to the conservation commission, board of selectmen or mayor which conducted the hearing hereunder. If such party is other than the applicant, a copy of such request shall also be sent at the same time by certified mail to the applicant. Upon receipt of such request the department shall make the determination requested and shall by written order issued within seventy days of receipt of such request and signed by the commissioner or his designee, impose such conditions as will contribute to the protection of the interests described

herein; provided, however, that said department shall notify the applicant within thirty days of the receipt of such request if his application or request is not in proper form or is lacking information or documentation necessary to make the determination. Such order shall supersede the prior order of the conservation commission, board of selectmen or mayor, and all work shall be done in accordance therewith, but in no event shall any work commence until ten days have elapsed following the issuance of said order. In the case of riverfront areas, no order issued by a conservation commission, board of selectmen, mayor, or the department shall permit any work unless the applicant, in addition to meeting the otherwise applicable requirements of this section, has proved by a preponderance of the evidence that (1) such work, including proposed mitigation measures, will have no significant adverse impact on the riverfront area for the following purposes: to protect the private or public water supply; to protect the ground water; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect the fisheries, and (2) there is no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on such purposes. An alternative is practicable and substantially economically equivalent if it is available and capable of being done after taking into consideration: costs, and whether such costs are reasonable or prohibitive to the owner; existing technology; the proposed use; and logistics in light of overall project purposes. For activities associated with access for one dwelling unit, the area under consideration for practicable alternatives will be limited to the lot; provided, that said lot shall be on file with the registry of deeds as of the [1] August first, nineteen hundred and ninety-six. For other activities including, but not limited to, the creation of a real estate subdivision, the area under consideration shall be the subdivided lots, any parcel out of which the lots were created, and any other parcels that are adjacent to such parcel or adjacent through other parcels formerly or presently owned by the same owner at any time on or after August first, nineteen hundred and ninety-six or any land which can reasonably be obtained; provided, that an ownership interest can reasonably be obtained after taking into consideration: cost, and whether such cost is reasonable or prohibitive to the owner; existing technology; the proposed use; and logistics in light of overall project purposes. At any time prior to a final order of determination by the department, any party requesting a determination may in writing withdraw the request, and such withdrawal shall be effective upon receipt by the department. Notwithstanding the withdrawal, the commissioner or his designee may continue the determination if he notifies all parties within ten days of receipt of the withdrawal. A copy of such order shall be sent to the applicant, to the conservation commission, board of selectmen or mayor which conducted the hearing hereunder. As used in this section the words "wildlife habitat" shall mean those areas subject to this section which, due to their plant community composition and structure, hydrologic regime or other characteristics, provide important food, shelter, migratory or overwintering areas, or breeding areas for wildlife.

No work proposed in any notice of intention shall be undertaken until the final order, determination or notification with respect to such work has been recorded in the registry of deeds, or if the land affected thereby be registered land, in the registry section of the land court for the district wherein the land lies. If the final order, determination or notification requires the recording of a plan which (1) shows the location of the work, (2) is prepared by a registered professional engineer or land surveyor and (3) is in recordable form, no work proposed in the notice of intention shall be undertaken until such plan has been recorded in the registry of deeds or, if the land affected thereby is registered land, in the registry section of the land court for the district wherein such land lies.

Within twenty-one days of the receipt of a written request, by the applicant or the owner of the property, for a certificate of compliance, the issuer of the final order shall grant such request if the activity, or portions thereof, complies with such final order. The certificate of compliance shall state that the activity, or portions thereof, has been completed in accordance with such order.

Any site where work is being done which is subject to this section shall display a sign of not less than two square feet or more than three square feet bearing the words, "Massachusetts Department of Environmental Protection File Number ...." and the sign shall display the file number assigned to the project.

If the department of environmental protection finds that any proposed work would violate the provisions of chapter ninety-one, it shall proceed immediately to enforce the provisions of said chapter.

The provisions of this section shall not apply to any mosquito control work done under the provisions of clause (36) of section five of chapter forty, of chapter two hundred and fifty-two or of any special act; to maintenance of drainage and flooding systems of cranberry bogs, to work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use; or to any project authorized by special act prior to January first, nineteen hundred and seventy-three.

Within one hundred and twenty days of the effective date of this act, the department, upon the advice and consent of the Commissioner of the Department of Food and Agriculture, shall promulgate rules and regulations pursuant to this section which shall establish definitions for the term "normal maintenance or improvement of land in agricultural, or in aquacultural use", for each agricultural commodity, or where appropriate because of similarities in cultural practices, groups or commodities in the Commonwealth. The department shall create a farmland advisory board to be appointed by the commissioner consisting of five persons one a member of the cooperative extension service, one a member of the USDA soil conservation service, one a member of a municipal conservation commission who has demonstrated expertise in agricultural issues, and two commercial farmers with expertise in different agricultural commodities to assist the department in the drafting of rules and regulations pursuant to this paragraph.

The notice of intention required in the first paragraph of this section shall not apply to emergency projects necessary for the protection of the health or safety of the commonwealth which are to be performed or which are ordered to be performed by an agency of the commonwealth or a political subdivision thereof. An emergency project shall mean any project certified to be an emergency by the conservation commission of the city or town in which the project would be undertaken, or if none, by the mayor of said city or the selectmen of said town. If the conservation commission, mayor, or selectmen, as the case may be, fail to act favorably within twenty-four hours of receipt of a request for certification of an emergency project, said project may be so certified by the commissioner or his designee. In no case shall any removal, filling, dredging, or alteration authorized by such certification extend beyond the time necessary to abate the emergency.

Notwithstanding the provisions of section fourteen of chapter twenty-one A or any other provision of law to the contrary, the notice of intention required in the first paragraph of this section shall not apply to a maintenance dredging project for which a license has been previously issued within ten years by the division of waterways of the department of environmental protection. A person intending to fill or dredge under such previously issued license shall file a written notice by certified mail to the conservation commission or if none, to the board of selectmen in a town or mayor of a city in which the land upon which such dredging project is located. Such notice shall contain the name and address of the applicant.

If the conservation commission, the board of selectmen or mayor fails to notify the applicant at the applicant's address within twenty days of the receipt of such notice of the specific objections to the commencement of such dredging fill or maintenance dredging contemplated under said license, the applicant may commence such work without any further notice to other agencies of the commonwealth. Notwithstanding failure to notify an applicant, as hereinbefore provided, the conservation commission, the board of selectmen or mayor may at any time designate an area at which spoilage from the dredging may be placed and may require the relocation of shellfish before such maintenance dredging takes place.

If the conservation commission, the board of selectmen or mayor cites specific objections to the notice of intention, such conservation commission, board of selectmen or mayor may order a hearing as provided in this section and all other pertinent provisions of this section shall apply.

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this section or in violation of any order issued under this section shall forthwith comply with any such order or restore such real estate to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three years following the recording of the deed or the date of the death by which such real estate was acquired by such person. Any court having equity jurisdiction may restrain a violation of this section and enter such orders as it deems necessary to remedy such violation, upon the petition of the attorney general, the commissioner, a city or town, an owner or occupant of property which may be affected by said removal, filling, dredging or altering, or ten residents of the commonwealth under

the provisions of section seven A of chapter two hundred and fourteen.

Rules and regulations shall be promulgated by the commissioner to effectuate the purposes of this section. However, failure by the commissioner to promulgate rules and regulations shall not act to suspend or invalidate the effect of this section. In addition to the other duties provided for in this section, a conservation commission and its agents, officers, and employees; the commissioner, his agents and employees; environmental officers, and any officer with police powers may issue enforcement orders directing compliance with this section and may undertake any other enforcement action authorized by law. Any person who violates the provisions of this section may be ordered to restore property to its original condition and take other actions deemed necessary to remedy such violations.

No person shall remove, fill, dredge or alter any area subject to protection under this section without the required authorization, or cause, suffer or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with an enforcement order issued pursuant to this section. Each day such violation continues shall constitute a separate offense except that any person who fails to remove unauthorized fill or otherwise fails to restore illegally altered land to its original condition after giving written notification of said violation to the conservation commission and the department shall not be subject to additional penalties unless said person thereafter fails to comply with an enforcement order or order of conditions.

Whoever violates any provision of this section, (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than two years, or both such fine and imprisonment; or (b), shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation.

Added by St.1967, c. 802, § 1. Amended by St.1968, c. 444, § 2; St.1971, c. 1020; St.1972, c. 784, § 1; St.1973, c. 163; St.1973, c. 769; St.1974, c. 818, § 1; St.1975, c. 334; St.1975, c. 363, §§ 1 to 3; St.1975, c. 706, §§ 237 to 243; St.1976, c. 53; St.1977, c. 131; St.1977, c. 601, § 1; St.1977, c. 625, § 2; St.1978, c. 95, §§ 1, 2; St.1978, c. 119, § 7; St.1978, c. 248; St.1979, c. 122, §§ 1, 2; St.1979, c. 200; St.1979, c. 598; St.1979, c. 693; St.1983, c. 255; St.1985, c. 231, § 44; St.1986, c. 262, § 1; St.1987, c. 174, § 19; St.1987, c. 465, § 30; St.1988, c. 202, § 26; St.1989, c. 218; St.1989, c. 287, § 54; St.1990, c. 177, §§ 232 to 237; St.1990, c. 388, §§ 1 to 3; St.1991, c. 141, § 2; St.1993, c. 472, § 1; St.1996, c. 258, §§ 17 to 20.

1 So in enrolled bill.

CHAPTER 132A

STATE RECREATION AREAS OUTSIDE OF THE METROPOLITAN PARKS DISTRICT

Selected section

Section

11. Conservation program for cities and towns; establishment.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 11. Conservation program for cities and towns; establishment

The secretary of environmental affairs shall establish a program to assist the cities and towns, which have established conservation commissions under section eight C of chapter forty, in acquiring lands and in planning or designing suitable public outdoor facilities as described in sections two B and two D. He may, from funds appropriated to carry out the provisions of section three, reimburse any such city or town for any money expended by it in establishing an approved project under said program in such amount as he shall determine to be equitable in consideration of anticipated benefits from such project, but in no event shall the amount of such reimbursement exceed eighty per cent of the cost of such project. No reimbursement shall be made hereunder to a city or town unless a project application is filed by such city or town with the secretary setting forth such plans and information as the secretary may require and approved by him, nor until such city or town shall have appropriated, transferred from available funds or have voted to expend from its conservation fund, under clause fifty-one of section five of chapter forty, an amount equal to the total cost of the project, nor until the project has been completed, to the satisfaction of the secretary, in accordance with said approved plans. Any reimbursement received by a city or town under this section shall be applied to the payment of indebtedness, if any, incurred in acquiring land for such conservation project.

Added by St.1960, c. 517. Amended by St.1966, c. 179; St.1975, c. 706, §§ 268, 269; St.1981, c. 149.

CHAPTER 139

COMMON NUISANCES

Selected sections

Section

3A. Demolition or removal of building or structure or securing of vacant land; owner's liability.

Section

3B. Disbursement of insurance proceeds for loss, damage or destruction of building or structure; notice; lien.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 3A. Demolition or removal of building or structure or securing of vacant land; owner's liability

If the owner or his authorized agent fails to comply with an order issued pursuant to section three and the city or town demolishes or removes any burnt, dangerous or dilapidated building or structure or secures any vacant parcel of land from a trespass, a claim for the expense of such demolition or removal, including the cost of leveling the lot to uniform grade by a proper sanitary fill, or securing such vacant parcel shall constitute a debt due the city or town upon the completion of demolition, removal, or securing and the rendering of an account therefor to the owner or his authorized agent, and shall be recoverable from such owner in an action of contract.

Any such debt, together with interest thereon at the rate of six per cent per annum from the date such debt becomes due, shall constitute a lien on the land upon which the structure is or was located if a statement of claim, signed by the mayor or the board of selectmen, setting forth the amount claimed without interest is filed, within ninety days after the debt becomes due, with the register of deeds for record or registration, as the case may be, in the county or in the district, if the county is divided into districts, where the land lies. Such lien shall take effect upon the filing of the statement aforesaid and shall continue for two years from the first day of October next following the date of such filing. If the debt for which such a lien is in effect remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed under section fifty-three of chapter fifty-nine, the mayor or the board of selectmen, or the town collector of taxes, if applicable under section thirty-eight A of chapter forty-one, shall certify such debt to the assessors, who shall forthwith add such debt to the tax on the property to which it relates and commit it with their warrant to the collector as part of such tax. If the property to which such debt relates is tax exempt, such debt shall be committed as the tax. Upon commitment as a tax or part of a tax, such debt shall be subject to the provisions of law relative to interest on the taxes of which they become, or, if the property were not tax exempt would become, a part; and the collector of taxes shall have the same powers and be subject to the same duties with respect to such debts as in the case of annual taxes upon real estate, and the provisions of law relative to the collection of such annual taxes, the sale or taking of land for the non-payment thereof, and the redemption of land so sold or taken shall, except as otherwise provided, apply to such claims. A lien under this section may be discharged by filing with the register of deeds for record or registration, as the case may be, in the county or in the district, if the county is divided into districts, where the land lies, a certificate from the collector of the city or town that the debt constituting the lien, together with any interest and costs thereon, has been paid or legally abated. All costs of recording or discharging a lien under this section shall be borne by the owner of the property.

Added by St.1970, c. 649, § 4. Amended by St.1984, c. 166, § 2; St.1992, c. 133, § 494.

§ 3B. Disbursement of insurance proceeds for loss, damage or destruction of building or structure; notice; lien

No insurer shall pay any claims (1) covering the loss, damage, or destruction to a building or other structure, amounting to one thousand dollars or more, or (2) covering any loss, damage or destruction of any amount, which causes the condition of a building or other structure to render section six of chapter one hundred and forty-three applicable, without having at least ten days previously given written notice to the building commissioner or inspector of buildings appointed pursuant to the state building code, to the fire department or arson squad of the city or town and to the board of health

or board of selectmen of the city or town in which the same is located. If at any time prior to payment the said city or town notifies the insurer by certified mail of its intent to initiate proceedings designed to perfect a lien pursuant to section three A, or to section nine of chapter one hundred and forty-three, or section one hundred and twenty-seven B of chapter one hundred and eleven, the said payment shall not be made while the said proceedings are pending; provided, however, that said proceedings are initiated within thirty days of receipt of such notification.

Any lien perfected pursuant to section three A, or to section nine of chapter one hundred and forty-three or section one hundred and twenty-seven B of chapter one hundred and eleven, shall extend to and may be enforced by the city or town against any casualty insurance policy or policies covering any loss, damage, or destruction pursuant to which the proceedings to perfect the lien were initiated.

No insurer shall be liable to any insured owner, mortgagee, assignee, city or town, or other interested party for amounts disbursed to a city or town under the provisions of this section, or for amounts not disbursed to a city or town under the provisions of this section.

Added by St.1977, c. 804, § 1. Amended by St.1986, c. 477.

CHAPTER 140

LICENSES

Selected sections

Section

32G. Monthly fees for manufactured housing community owner or operator; collection; deposit; lists; payment to treasurers; exemption from taxes; penalties; revocation of license.

136A. Definitions applicable to Secs. 137 to 175.

Section

139A. Shelters; sale or gift of dog or cat not spayed or neutered.

147A. By-laws and ordinances relative to regulation of dogs.

149. Accounts of treasurers.

172. Disposition of balance of dog fund.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 32G. Monthly fees for manufactured housing community owner or operator; collection; deposit; lists; payment to treasurers; exemption from taxes; penalties; revocation of license

In addition to the license fee provided for under section thirty-two B, each manufactured housing community owner or operator licensed under said section shall, except as hereinafter provided, pay an additional license fee of six dollars per month or a major fraction thereof, on account of each manufactured home, occupying space within such manufactured housing community; provided, however, that in a city by vote of the city council and in a town by vote of the board of selectmen, the amount of such additional license fee may be increased to an amount not exceeding twelve dollars per month. Such additional license fee shall, except as hereinafter provided, be collected by such manufactured housing community operator from the owner or occupant of each manufactured home occupying space in such manufactured housing community at the end of each month or any major fraction thereof, and shall be deposited with the collector of taxes in the city or town in which such manufactured housing community is located not later than the tenth day of the month next following. The manufactured housing community operator shall, not later than the fifth day of each month, file with the licensing authority a list containing the amounts collected together with the name and address of each owner of a manufactured home occupying space during the preceding month or the tenant or subtenant of such space and designating the manufactured homes and the home owners or tenants of the space or such subtenants thereof on account of which no additional license fee is to be collected or deposited under the provisions of the last paragraph of this section. The licensing authority shall forthwith commit the list to the collector of taxes in the city or town in which the manufactured housing community is located for collection. Such collector, shall in the collection of such accounts, have all the remedies provided by sections thirty-five, thirty-six and ninety-three of chapter sixty for the collection of taxes on personal property. The collector of taxes shall, once in each week or more often, pay over to the city or town treasurer all money received by him during the preceding week or lesser period on account of such license fees. Each manufactured home subject to the license fee provided for in this section shall be exempt from any property tax as provided in clause Thirty-sixth of section five of chapter fifty-nine.

The collector of taxes shall report to the licensing authority any failure to deposit with him any license fee so collected, and any failure by a manufactured housing community operator to collect any license fee provided for under this section or to deposit with the collector of taxes any license fee so collected shall be deemed cause for the revocation of any license granted under section thirty-two B. In addition, any willful failure to deposit with the collector of taxes a licensee fee which has been so collected shall be punished by a fine of not less than ten nor more than one hundred dollars for each fee so collected and not deposited.

No additional license fee imposed by this section shall be collected by the operator of a manufactured housing community, nor shall any such fee be required to be deposited with the collector of taxes in the city or town in which such community is located, on account of a manufactured home which is deemed, by section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940,[1] as amended, not to be located or present in or to have a situs in

such city or town for the purposes of taxation in respect to personal property.

Added by St.1950, c. 326, § 8. Amended by St.1950, c. 802, § 3; St.1952, c. 583, § 1; St.1954, c. 410; St.1964, c. 592, § 10; St.1966, c. 104; St.1968, c. 464, §§ 2, 3; St.1972, c. 470; St.1991, c. 481, § 19; St.1993, c. 145, § 5.

[1] 50 U.S.C.A. App. § 574.

§ 136A. Definitions applicable to Secs. 137 to 175

The following words and phrases as used in sections one hundred and thirty-seven to one hundred and seventy-five, inclusive, unless the context otherwise requires, shall have the following meanings:

"Adoption", the delivery of a cat or dog to any person eighteen years of age or older for the purpose of harboring as a pet.

"Commissioner", the commissioner of public health.

"Director", the director of the division of accounts of the department of corporations and taxation.

"Dog fund", the fees, fines and reimbursements collected in connection with the licensing of dogs and the enforcement of said sections.

"Dog officer", any officer appointed under said sections to enforce the laws relating to dogs.

"Keeper", any person, corporation or society, other than the owner, harboring or having in his possession any dog.

"Kennel", one pack or collection of dogs on a single premises, whether maintained for breeding, boarding, sale, training, hunting or other purposes and including any shop where dogs are on sale, and also including every pack or collection of more than three dogs three months old or over owned or kept by a person on a single premises irrespective of the purpose for which they are maintained.

"License period", the time between April first and the following March thirty-first, both dates inclusive.

"Live stock or fowls", animals or fowls kept or propagated by the owner for food or as a means of livelihood; also deer, elk, cottontail rabbits and northern hares, pheasants, quail, partridge and other birds and quadrupeds determined by the department of fisheries, wildlife and environmental law enforcement to be wild and kept by, or under a permit from, said department in proper houses or suitable enclosed yards. Such phrase shall not include dogs, cats and other pets.

"Research institution", any institution operated by the United States or by the commonwealth or a political subdivision thereof, or any school or college of medicine, public health, dentistry, pharmacy, veterinary medicine or agriculture, medical diagnostic laboratory or biological laboratory, hospital or other educational or scientific establishment within the commonwealth above the rank of secondary school, which, in connection with any of its activities, investigates or gives instruction concerning the structure or functions of living organisms or the causes, prevention, control or cure of diseases or abnormal conditions of human beings or animals.

"Shelter", a public animal control facility, or any other facility which is operated by any organization or individual for the purpose of protecting animals from cruelty, neglect, or abuse.

Added by St.1934, c. 320, § 1. Amended by St.1943, c. 111, § 1; St.1975, c. 706, § 283; St.1983, c. 631, §§ 2, 3; St.1985, c. 231, § 54; St.1987, c. 331, § 1.

§ 139A. Shelters; sale or gift of dog or cat not spayed or neutered

No shelter shall sell or give away any dog or cat that has not been spayed or neutered, unless a deposit of not less than ten nor more than thirty dollars for spaying or neutering such dog or cat has been tendered to the shelter. The shelter may make appropriate arrangements for the spaying or neutering of such dog or cat by a licensed veterinarian, or may return the deposit to the person purchasing or receiving the dog or cat upon presentation of a written statement or receipt from a veterinarian or clinic that the dog or cat has been spayed or neutered by a licensed veterinarian.

Any dog or cat six months of age or older at the time it is sold or given away by the shelter shall be so spayed or neutered within sixty days, or the deposit shall be deemed unclaimed. Any dog or cat under six months of age at the time it is sold or given away by the shelter shall be so spayed or neutered within sixty days after reaching six months of age, or the deposit shall be deemed unclaimed.

Any deposit not claimed under this section shall be used only for the following purposes:

(1) a public education program to prevent overpopulation of dogs or cats;

(2) a program to spay or neuter dogs or cats;

(3) a follow up program to assure that animals sold or given away by the shelter are spayed or neutered; or

(4) costs incurred under this section.

A shelter may enter into a cooperative agreement with another shelter and with a veterinarian in carrying out the provisions of this section.

Added by St.1987, c. 331, § 2.

§ 147A. By-laws and ordinances relative to regulation of dogs

Any city or town which accepts the provisions of this section is hereby empowered to enact by-laws and ordinances relative to the regulation of dogs. Except as hereinafter provided in clauses (a), (b) and (c), and notwithstanding any contrary provision of sections one hundred and thirty-seven to one hundred and seventy-four D, inclusive, relating to the regulation of dogs or any special law relating to the regulation of dogs, such by-laws and ordinances may relate to, but not be limited to dog licensing, establishing dog fees, disposition of fees, appointment of dog officers, kennel licensing and regulations, procedures for the investigation of and reimbursement for damage caused by dogs, restraining of dogs and establishing penalties for a breach thereof. No such by-law or ordinance shall be inconsistent with the provisions of this chapter relating to (a) the turning over or sale of animals to any business or institution licensed or registered as a research facility or animal dealer, as provided in section one hundred and fifty-one; (b) the minimum confinement period of dogs as provided in section one hundred and fifty-one A; and (c) the methods of execution, as provided in said section one hundred and fifty-one A.

In any city or town which accepts this section, all money received from licenses or recovered as fines under any by-law or ordinance enacted pursuant to the provisions of this section, shall be paid into the treasury of said town or city and shall not thereafter be paid over by the town or city treasurer to the county in which said town or city is located.

Any and all functions relating to the regulation of dogs pursuant to section one hundred and thirty-seven to one hundred and seventy-four D, inclusive, which would otherwise be performed by the county, by the county commissioner or otherwise, shall not be performed by the county on behalf of any city or town which is not a member of the county dog fund.

Any and all costs which would otherwise be paid out of the county dog fund shall not be paid by the county to any city or town which is not a member of the county dog fund, or to any city or town which accepts this section and such cities and towns shall thereupon be responsible for all costs and expenses relating to the regulation of dogs.

Added by St.1985, c. 308. Amended by St.1986, c. 201, § 1.

§ 149. Accounts of treasurers

Each county, city and town treasurer, except in Suffolk county, shall keep an accurate and separate account of all money received and expended by him under the provisions of this chapter relating to dogs.

Historical and Statutory Notes

St.1859, c. 225, § 1.
G.S.1860, c. 88, § 53.
St.1864, c. 299, § 4.
St.1867, c. 130, § 4.
P.S.1882, c. 102, § 85.
R.L.1902, c. 102, § 135.

§ 172. Disposition of balance of dog fund

Money received by a county treasurer under the preceding sections relating to dogs, and not paid out for damages, license blanks or books, record books, anti-rabic vaccine or other purposes as required under said sections, shall, in January, be paid back to the treasurers of the towns in proportion to the amounts received from such towns, and the money so refunded shall be expended for the support of public libraries or schools. In Suffolk county, money so received by the town treasurer and not so paid out shall be expended by the school committee for the support of public schools.

Amended by St.1932, c. 289, § 8.

Historical and Statutory Notes

St.1865, c. 197, § 3.
St.1867, c. 130, § 12.
St.1869, c. 250, § 1.
P.S.1882, c. 102, § 107.
R.L.1902, c. 102, § 163.

CHAPTER 143

INSPECTION AND REGULATION OF, AND LICENSES FOR, BUILDINGS, ELEVATORS AND CINEMATOGRAPHS

Selected section

Section

9. Dangerous or abandoned structures removed or made safe by local inspector; costs; penalty; use of structure.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 9. Dangerous or abandoned structures removed or made safe by local inspector; costs; penalty; use of structure

If such report declares such structure to be dangerous or to be unused, uninhabited or abandoned, and open to the weather, and if the owner, lessee or mortgagee in possession continues such refusal or neglect, the local inspector shall cause it to be made safe or taken down or to be made secure, and, if the public safety so requires, said local inspector may at once enter the structure, the land on which it stands or the abutting land or buildings, with such assistance as he may require, and secure or remove the same, and may remove and evict, under the pertinent provisions of chapter two hundred thirty-nine or otherwise, any tenant or occupant thereof, and may erect such protection for the public by proper fence or otherwise as may be necessary, and for this purpose may close a public highway. In the case of such demolition, the local inspector shall cause such lot to be levelled to uniform grade by a proper sanitary fill. The costs and charges incurred shall constitute a debt due the city or town upon completion of the work and the rendering of an account therefor to the owner of such structure, and shall be enforced in an action of contract, and such owner, lessee or mortgagee in possession shall, for every day's continuance of such refusal or neglect after being so notified, be punished by a fine of not less than one hundred dollars. The provisions of the second paragraph of section three A of chapter one hundred and thirty-nine, relative to liens for such debt and the collection of claims for such debt, shall apply to any debt referred to in this section, except that the local inspector shall act hereunder in place of the mayor or board of selectmen. During the time such order is in effect it shall be unlawful to use or occupy such structure or any portion thereof for any purpose.

Amended by St.1945, c. 697, § 2; St.1949, c. 156, § 5; St.1949, c. 541, § 3; St.1957, c. 214, § 4; St.1959, c. 75; St.1970, c. 649, § 5; St.1972, c. 802, § 25; St.1979, c. 479; St.1992, c. 133, § 499.

Historical and Statutory Notes

St.1878, c. 47, §§ 4, 5.
P.S.1882, c. 104, § 7.
St.1894, c. 481, § 17.
St.1899, c. 139, § 4.
R.L.1902, c. 104, § 7.
St.1913, c. 655, § 7.

CHAPTER 147

STATE AND OTHER POLICE, AND CERTAIN POWERS AND DUTIES OF THE DEPARTMENT OF PUBLIC SAFETY

Selected sections

Section
17A. Additional days off or pay.
17B. Five day and forty hour week; compensation for additional service; reduction in compensation.
17C. Time off or pay for overtime duty.
17E. Overtime compensation upon discharge, resignation, retirement or death.
17F. Police chiefs; working on holidays; additional pay.
17G. Five day forty-hour week; overtime pay.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 17A. Additional days off or pay

If any police officer of a city or town is required to work on January the first, July the fourth or Christmas day, or the day following when any of said days occurs on Sunday, or the third Monday in February, the third Monday in April, the last Monday in May, the first Monday in September, the second or fourth Monday in October or Thanksgiving day, he shall be given an additional day off, or, if such additional day off cannot be given because of personnel shortage or other cause, he shall be entitled to an additional day's pay; provided, that, in the case of any such police officer whose regular day off, vacation day or a day on which he is absent from duty because of injuries sustained in line of duty, falls on any of the aforementioned holidays, an additional day off shall be allowed, or payment in lieu of one day shall be allowed. Such additional day's pay shall be based on the hourly rate of his regular compensation for his average weekly hours of regular duty or such higher rate as may be determined by the person or persons authorized to establish pay scales in the respective police departments. This section shall take effect in a city having a Plan E charter when accepted by the affirmative vote of a majority of the city council, and in the case of other cities by vote of the city council subject to the provisions of its charter, and in a town by a majority vote at an annual town meeting.

Added by St.1952, c. 268. Amended by St.1961, c. 200; St.1962, c. 318; St.1965, c. 205; St.1968, c. 704; St.1970, c. 547, § 5.

§ 17B. Five day and forty hour week; compensation for additional service; reduction in compensation

Notwithstanding the provisions of any general or special law to the contrary, the services of all regular or permanent police officers of every city and town which accepts this section shall be restricted to five days and to forty hours in any one week; provided, that service in excess of the aforesaid days and hours may be authorized by the police commissioner, chief, superintendent or other officer or board at the head of the police department of any such city or town and the officer performing such additional service shall be compensated at the hourly rate of his regular compensation for his average weekly hours of regular duty or such higher rate as may be determined by the person or persons authorized to establish pay scales in the respective police departments. The compensation payable to any such police officer shall not be reduced by reason of the acceptance of this section. This section shall take effect in a city having a Plan E or Plan D charter when accepted by the affirmative vote of a majority of the city council and in the case of other cities by vote of the city council, subject to the provisions of its charter, and in a town by a majority vote at the annual town meeting.

Added by St.1956, c. 349.

§ 17C. Time off or pay for overtime duty

If a regular police officer in the service of a city or town which has not accepted section seventeen B shall be required to be on duty for any period in excess of his regular hours of duty as from time to time established, he may be given time off equal to such period of overtime duty or, if time off cannot be given by reason of a personnel shortage or other cause, he may be paid for such period of overtime duty at such an hourly rate as may be determined by the authority in charge of the police department, which rate shall in no event be less than one and one half times the hourly rate of his regular compensation for his average weekly hours of regular duty.

Added by St.1956, c. 349. Amended by St.1969, c. 872, § 2.

§ 17E. Overtime compensation upon discharge, resignation, retirement or death

Whenever the employment of any police officer subject to section one hundred and eleven H of chapter forty-one or sections seventeen A, seventeen B, and seventeen C of this chapter is terminated during a year by dismissal through no fault or delinquency on his part or by resignation, retirement or death, without his having received the compensation to which he is entitled under such sections, he, or in case of his death, his estate, shall be paid the full amount of such compensation, provided that no monetary or other allowance has already been made therefor. The official head of the department in which the police officer was last employed shall enter on the departmental payroll all amounts payable under this section.

Added by St.1962, c. 321, § 1.

§ 17F. Police chiefs; working on holidays; additional pay

If the superintendent of police in the city of Lowell, the city marshal in the cities of Newburyport and Salem, or the chief of police in any other city or town, is on duty at any time on January the first, July the fourth or Christmas day, or the day following when any of said days occurs on Sunday, or the third Monday in February, the third Monday in April, the last Monday in May, the first Monday in September, the second or fourth Monday in October or Thanksgiving day, he shall be granted an additional day's pay.

Added by St.1969, c. 435, § 1. Amended by St.1970, c. 547, § 5A.

§ 17G. Five day forty-hour week; overtime pay

Notwithstanding the provisions of any general or special law to the contrary, the services of all regular or permanent police officers of every city and town which accepts this section shall be restricted to five days and to forty hours in any one week; provided, that service in excess of the aforesaid days and hours may be authorized by the police commissioner, chief, superintendent or other officer or board at the head of the police department of any such city or town and the officer performing such additional service shall be compensated at an hourly rate equal to one and one half times the hourly rate of his regular compensation for his average weekly hours of regular duty or such higher rate as may be determined by the person or persons authorized to establish pay scales in the respective police departments. The compensation payable to any such police officer shall not be reduced by reason of the acceptance of this section. This section shall take effect in a city having a Plan E or Plan D charter when accepted by the affirmative vote of a majority of the city council and in the case of other cities by vote of the city council, subject to the provisions of its charter, and in a town by a majority vote at the annual town meeting.

Added by St.1969, c. 872, § 1.

CHAPTER 148

FIRE PREVENTION

Selected section

Section

5. Investigation of premises and alleys as to fire hazards; remedy of conditions; expenses; penalty.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 5. Investigation of premises and alleys as to fire hazards; remedy of conditions; expenses; penalty

The marshal, the head of the fire department or any person to whom the marshal or the head of the fire department may delegate his authority in writing may, and upon complaint of a person having an interest in any building or premises or property adjacent thereto, shall, at any reasonable hour, enter into buildings and upon premises, which term for the purposes of the remainder of this section shall include alleys adjacent thereto, within their jurisdiction and make an investigation as to the existence of conditions likely to cause fire. They shall, in writing, order such conditions to be remedied, and whenever such officers or persons find in any building or upon any premises any accumulation of combustible rubbish including, but not limited to, waste paper, rags, cardboard, string, packing material, sawdust, shavings, sticks, waste leather or rubber, broken boxes or barrels or any other refuse or useable materials that is or may become dangerous as a fire menace or as an obstacle to easy ingress into or egress from such buildings or premises, they shall, in writing, order the same to be removed or such conditions to be remedied. Notice of such order shall be served upon the owner, occupant or his authorized agent by a member of the fire or police department. If said order is not complied with within twenty-four hours, the person making such order, or any person designated by him, may enter into such building or upon such premises and remove such refuse or any useable materials or abate such conditions at the expense of such owner or occupant. Any expense so incurred by or on behalf of the commonwealth or of any city or town, shall be a debt due the commonwealth or the city or town, as the case may be, upon completion of such removal or abatement and the rendering of an account therefor to the owner. The provisions of the second paragraph of section three A of chapter one hundred and thirty-nine, relative to liens for such debt and the collection of the claims for such debt, shall apply to any debt referred to in this section, except that the marshal or the head of the fire department shall act hereunder in place of the mayor or board of selectmen. In the case of debts due the commonwealth, the collector of taxes shall pay over to the treasurer of the commonwealth the amounts collected by him. Any such owner or occupant who fails or refuses to comply with said order shall be punished by a fine of not more than fifty dollars for each consecutive forty-eight hours during which such failure or refusal to comply continues.

Amended by St.1945, c. 463; St.1962, c. 456; St.1979, c. 516; St.1992, c. 133, § 500.

Historical and Statutory Notes

St.1894, c. 444, § 5.
R.L.1902, c. 32, § 5.
St.1902, c. 142, §§ 1, 2.
St.1903, c. 365, § 1.
St.1904, c. 433, § 1.
St.1914, c. 795, § 8.
St.1919, c. 350, § 104.
St.1920, c. 436.
G.L.1921, c. 148, §§ 6, 34.
St.1928, c. 277, § 2.
St.1929, c. 205, § 3.
St.1930, c. 399, § 1.

CHAPTER 149

LABOR AND INDUSTRIES

Selected sections

Section

33A. Five day and forty hour week for cities and towns; emergencies; overtime; reduction of compensation.

33B. Five day week and eight hour day for cities and towns; overtime; reduction of compensation.

33C. City and town employees; overtime; effective date.

44A. Definitions; competitive bids; award; bonds; extreme emergency situations; records contracts not subjected to competitive bid process.

148. Payment of wages; commissions; exemption by contract; persons deemed employers; provision for cashing check or draft; violation of statute.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 33A. Five day and forty hour week for cities and towns; emergencies; overtime; reduction of compensation

Except as otherwise provided in this section and notwithstanding any other provision of general or special law, the service of all persons employed by every city in which this section has been accepted in the manner provided in earlier provisions thereof, or shall be accepted, in the case of cities having a Plan E charter, by the affirmative vote of two thirds of all the members of the city council, and, in the case of other cities by vote of the city council, subject to the provisions of the charter, and in every town in which it has been or shall be accepted by vote of the town at an annual town meeting, shall be restricted to five days and forty hours in any one week; provided, that, in cases of emergency, when the mayor or a city official designated by him, the city manager in cities having a Plan E charter, or a city official designated by him, and the board of selectmen or a town official designated by them, determines that public necessity so requires, which determination shall be final and conclusive, service in excess of the days and hours aforesaid may be authorized by an officer of such city or town or by any other person whose duty it is to employ, direct or control such employees, and such additional service shall be compensated for as overtime. This section shall not apply to policemen, firemen, school teachers, incumbents of offices specifically established by or under the authority of any general law or special act, or such other classes or groups of employees as from time to time may be specifically exempted therefrom in the manner provided for the acceptance of this section. The compensation payable to any employee shall not be reduced by reason of acceptance of this section.

Added by St.1947, c. 649. Amended by St.1948, c. 657.

§ 33B. Five day week and eight hour day for cities and towns; overtime; reduction of compensation

Except as otherwise provided in this section and notwithstanding any other provision of general or special law, the service of all persons employed by every city in which this section shall be accepted, in the case of cities having a Plan E charter, by the affirmative vote of two thirds of all the members of the city council, and, in the case of other cities by vote of the city council, subject to the provisions of its charter, and in every town in which it shall be accepted by vote of the town at an annual town meeting, shall be restricted to five days and forty hours in any one week, and eight hours in any one day, and said eight hours shall be arranged to fall within a period of not exceeding nine consecutive hours; provided, that service in excess of the days and hours aforesaid may be authorized by an officer of such city or town or by any other person whose duty it is to employ, direct or control such employees, and such additional service shall be compensated for as overtime. This section shall not apply to policemen, firemen, school teachers, incumbents of offices specifically established by or under the authority of any general law or special act, or such other classes or groups of employees as from time to time may be specifically exempted therefrom in the manner provided for the acceptance of this section. The compensation payable to any employee shall not be reduced by reason of acceptance of this section. The provisions of section thirty-three A shall not apply in any city or town which accepts this section.

Added by St.1950, c. 653.

§ 33C. City and town employees; overtime; effective date

Notwithstanding any other provision of general or special law, any permanent employee of a city

or town who is required to work in excess of his regular number of maximum hours per week as regulated by law, ordinance or by-law or rule shall be compensated for such additional hours of service at a rate of one and one half times his regular hourly compensation. The provisions of sections thirty-three A and thirty-three B shall not apply in any city or town which accepts this section.

This section shall take effect upon its acceptance in a city having a Plan E charter, by the affirmative vote of two thirds of all the members of the city council, and, in any other city by vote of the city council, subject to the provisions of its charter, and in a town by majority vote at the annual town meeting.

Added by St.1961, c. 510.

§ 44A. Definitions; competitive bids; award; bonds; extreme emergency situations; records contracts not subjected to competitive bid process

(1) The words defined in this section shall have the meaning set forth below whenever they appear in sections forty-four A through forty-four H, inclusive, of this chapter unless indicated otherwise or unless the context in which they are used clearly requires a different meaning.

"Commissioner", means the commissioner of the division of capital asset management and maintenance or his designee.

"Public Agency" means a department, agency, board, commission, authority, or other instrumentality of the commonwealth or political subdivision of the commonwealth, or two or more subdivisions thereof but not including the Massachusetts Bay Transportation Authority;

"Responsible" means demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work called for by a particular contract, based upon a determination of competent workmanship and financial soundness in accordance with the provisions of section forty-four D of this chapter;

"Eligible" means able to meet all requirements for bidders or offerors set forth in sections forty-four A through forty-four H of this chapter and not debarred from bidding under section forty-four C of this chapter or any other applicable law, and who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.

"Modular Building", a pre-designed building or units of a pre-designed building assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such units are attached to each other and such building is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a roof, designed or used for the shelter of persons or property, transportable in one or more sections and affixed to a foundation and connected to external utilities.

"Procurement", buying, purchasing, or otherwise acquiring and installing a modular building, and all functions that pertain to the acquisition and installation of a modular building, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Proprietary environmental technology systems", systems, in the town of Nantucket, including solid waste related equipment, supporting structures, and buildings, designed, manufactured, and produced under exclusive individual right to sell such product, pertaining to solid waste related environmental protection or remediation. Such systems shall include, but not be limited to, sequential, turnkey, construction management, design/build procurement, and the phasing of such procurement, including approval of design and construction stages as separate or combined phases.

[Subsection (2) applicable as provided by 2009, 30, Secs. 17 and 46.]

(2)(A) Every contract or procurement for the construction, reconstruction, installation, demolition, maintenance or repair of a building by a public agency estimated to cost less than $10,000, shall be obtained through the exercise of sound business practices; provided, however, that the public agency shall make and keep a record of each such procurement; and provided further, that the record shall, at a minimum, include the name and address of the person from whom the services were procured.

(B) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building estimated to cost not less than $10,000 but not more than $25,000 shall be awarded to the responsible person offering to perform the contract at the lowest price. The public agency shall make public notification of the contract and shall seek written responses from persons who customarily perform such work. The public

notification shall include a scope-of-work statement that defines the work to be performed and provides potential responders with sufficient information regarding the objectives and requirements of the public agency and the time period within which the work shall be completed. For the purposes of this paragraph, "public notification" shall include, but need not be limited to, posting at least 2 weeks before the time specified in the notification for the receipt of responses, the contract and scope-of-work statement on the website of the public agency, on the COMPASS system, in the central register published pursuant to section 20A of chapter 9 and in a conspicuous place in or near the primary office of the public agency.

(C) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost not less than $25,000 but not more than $100,000, except for a pumping station to be constructed as an integral part of a sewer construction or water construction project bid under the provisions of section 39M of chapter 30, shall be awarded to the lowest responsible and eligible bidder on the basis of competitive bids publicly opened and read in accordance with the procedure set forth in said section 39M of said chapter 30. The term "pumping station" as used in this section shall mean a building or other structure which houses solely pumps and appurtenant electrical and plumbing fixtures.

(D) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost more than $100,000, except for a pumping station to be constructed as an integral part of a sewer construction or water construction project bid under the provisions of section 39M of chapter 30, shall be awarded to the lowest responsible and eligible general bidder on the basis of competitive bids in accordance with the procedure set forth in section 44A to 44H, inclusive.

(E) When the general court has approved the use of an alternative mode of procurement of construction for a project pursuant to section 7E of chapter 29, the awarding authority responsible for procuring construction services for the project shall follow the policies and procedures of this section and of section 44B to 44H, inclusive, to the extent compatible with the mode of construction procurement selected.

(F) Notwithstanding paragraph (E), a public agency may undertake the procurement of modular buildings, in accordance with section 44E. A public agency may procure site work for modular buildings, including but not limited to, construction of foundations, installations, and attachment to external utilities, or any portion of site work, either in combination with the procurement of modular buildings pursuant to section 44E or on the basis of competitive bids pursuant to the paragraph (E). Notwithstanding the paragraph (E), a public agency may procure energy management services in accordance with section 11C of chapter 25A and regulations promulgated thereunder.

(3) The award of every such contract in connection with which approval by an officer, board or agency of the federal government is required shall be made within thirty days, Saturdays, Sundays and legal holidays excluded, after such approval; and the award of every contract subject to this section in connection with which approval by an officer, board or agency of the federal government is not required shall be made within thirty days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids therefor. If the bidder selected as the general contractor fails to perform his agreement to execute a contract in accordance with the terms of his bid and furnish a performance bond and also a labor and materials or payment bond as stated in his bid in accordance with section forty-four E, an award shall be made to the next lowest responsible and eligible bidder, subject to the provisions of sections forty-four A to forty-four H, inclusive, of this chapter. The thirty-day time limit shall not be applicable to a second or subsequent award made after expiration of the time limit with the consent of said next lowest responsible and eligible bidder, and made because the original award made within the time limit was invalid, or because the bidder failed to execute the contract or to provide a performance bond and labor and materials or payment bond.

(4) In cases of extreme emergency, the awarding authority may, with the prior approval of the commissioner, award a contract for that portion of the work necessary to preserve the health or safety of persons or property or to alleviate an imminent security threat on the basis of such competitive bids or proposals as it can obtain in time to care for the extreme emergency and without public opening of the bids or proposals.

Where the nature of the emergency prevents the awarding authority from obtaining the prior ap-

proval of the commissioner, the awarding authority may contract for the necessary work without said prior approval; provided, however, that the approval of the commissioner shall still be sought at the earliest possible time; and provided, further, that if the commissioner at that time fails to approve the emergency determination the awarding authority shall promptly cease all work for which the emergency determination was denied. In such cases, the contractor shall be entitled to payment for the fair value of the labor and materials furnished prior to cessation of the work.

The commissioner shall maintain a record of all contracts awarded pursuant to this subsection, containing a description of the circumstances and the reasons for the commissioner's determination.

(5) (a) Notwithstanding the provisions of this section or any other general or special law to the contrary, a municipality may enter into a contract for proprietary environmental technology systems as defined in subsection (1) of this section without said contract being subject to the competitive bid process as set forth in sections thirty-eight A½ to thirty-eight *O*, inclusive, of chapter seven; this section and sections forty-four B to forty-four H, inclusive, of this chapter, and section thirty-nine M of chapter thirty; provided that the awarding authority meets the conditions set forth and receives the approvals required in paragraph (b) of this subsection.

(b) Prior to the issuance of any request for proposal with respect to the awarding of any contract pursuant to the provisions of paragraph (a) of this subsection, the awarding authority shall meet or obtain each of the following conditions or required approvals: (1) the municipality shall appoint qualified persons to conduct a thorough review of all available environmental technology, including both proprietary and non-proprietary environmental technology, and if the conclusion of this review is that a contract for proprietary environmental technology systems is in the public interest, such conclusion shall be supported by sound documented reasons in writing available for public inspection; (2) the city council, the board of selectmen, or the town meeting shall take a majority vote finding that it is in the public interest to enter into a contract for proprietary environmental technology systems, as defined in subsection (1) of this section, providing such vote is supported by the conclusion of the review conducted pursuant to condition (1); (3) both the attorney general and the commissioner of the department of environmental protection shall grant written approval; (4) said contract shall be subject to any limitation in the waiver of sections thirty-eight A½ to thirty-eight *O*, inclusive, of chapter seven, sections forty-four A to forty-four H of chapter one hundred and forty-nine, and section thirty-nine M of chapter thirty imposed by either the attorney general or the commissioner of the department of environmental protection as a condition for a grant of approval by said officers; and (5) every proprietary environmental technology systems contract shall be as compatible with sections thirty-eight A to thirty-eight *O*, inclusive, of chapter seven, sections forty-four A to forty-four H of chapter one hundred and forty-nine, and section thirty-nine M of chapter thirty as is feasible for the procurement of the proprietary environmental technology systems chosen.

Added by St.1980, c. 579, § 55. Amended by St.1983, c. 701, § 5A; St.1984, c. 484, §§ 44, 45; St.1985, c. 675; St.1988, c. 210, §§ 3 to 6; St.1990, c. 481, § 50; St.1991, c. 138, §§ 239, 240; St.1992, c. 286, §§ 205 to 207; St.1994, c. 60, § 136; St.1994, c. 126, § 16; St.1996, c. 151, §§ 379, 380; St.1997, c. 19, § 69; St.1998, c. 194, § 182; St.2004, c. 193, §§ 11, 12, eff. July 19, 2004; St.2009, c. 166, § 30, eff. Nov. 24, 2009; St.2010, c. 188, § 63, eff. July 27, 2010; St.2010, c. 409, § 16, eff. Jan. 3, 2011.

§ 148. Payment of wages; commissions; exemption by contract; persons deemed employers; provision for cashing check or draft; violation of statute

Every person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him to within six days of the termination of the pay period during which the wages were earned if employed for five or six days in a calendar week, or to within seven days of the termination of the pay period during which the wages were earned if such employee is employed seven days in a calendar week, or in the case of an employee who has worked for a period of less than five days, hereinafter called a casual employee, shall, within seven days after the termination of such period, pay the wages earned by such casual employee during such period, but any employee leaving his employment shall be paid in full on the following regular pay day, and, in the absence of a regular pay day, on the following Saturday; and any employee discharged from such employment shall be paid in full on the day of his discharge, or in Boston as soon as the laws requiring pay rolls, bills and accounts to be certified shall have been complied with; and the commonwealth, its departments, officers, boards and commissions shall so pay every mechanic, workman and laborer employed by it or them, and every person employed in any other capacity by it or them in any penal or

charitable institution, and every county and city shall so pay every employee engaged in its business the wages or salary earned by him, unless such mechanic, workman, laborer or employee requests in writing to be paid in a different manner; and every town shall so pay each employee engaged in its business if so required by him; but an employee absent from his regular place of labor at a time fixed for payment shall be paid thereafter on demand; provided, however, that the department of telecommunications and energy, after hearing, may authorize a railroad corporation or a parlor or sleeping car corporation to pay the wages of any of its employees less frequently than weekly, if such employees prefer less frequent payments, and if their interests and the interests of the public will not suffer thereby; and provided, further, that employees engaged in a bona fide executive, administrative or professional capacity as determined by the attorney general and employees whose salaries are regularly paid on a weekly basis or at a weekly rate for a work week of substantially the same number of hours from week to week may be paid bi-weekly or semi-monthly unless such employee elects at his own option to be paid monthly; and provided, further, that employees engaged in agricultural work may be paid their wages monthly; in either case, however, failure by a railroad corporation or a parlor or sleeping car corporation to pay its employees their wages as authorized by the said department, or by an employer of employees engaged in agricultural work to pay monthly the wages of his or her employees, shall be deemed a violation of this section; and provided, further, that an employer may make payment of wages prior to the time that they are required to be paid under the provisions of this section, and such wages together with any wages already earned and due under this section, if any, may be paid weekly, bi-weekly, or semi-monthly to a salaried employee, but in no event shall wages remain unpaid by an employer for more than six days from the termination of the pay period in which such wages were earned by the employee. For the purposes of this section the words salaried employee shall mean any employee whose remuneration is on a weekly, bi-weekly, semi-monthly, monthly or annual basis, even though deductions or increases may be made in a particular pay period. The word "wages" shall include any holiday or vacation payments due an employee under an oral or written agreement. An employer, when paying an employee his wage, shall furnish to such employee a suitable pay slip, check stub or envelope showing the name of the employer, the name of the employee, the day, month, year, number of hours worked, and hourly rate, and the amounts of deductions or increases made for the pay period.

Compensation paid to public and non-public school teachers shall be deemed to be fully earned at the end of the school year, and proportionately earned during the school year; provided, however, that payment of such compensation may be deferred to the extent that equal payments may be established for a 12 month period including amounts payable in July and August subsequent to the end of the school year.

Every railroad corporation shall furnish each employee with a statement accompanying each payment of wages listing current accrued total earnings and taxes and shall also furnish said employee with each such payment a listing of his daily wages and the method used to compute such wages.

This section shall apply, so far as apt, to the payment of commissions when the amount of such commissions, less allowable or authorized deductions, has been definitely determined and has become due and payable to such employee, and commissions so determined and due such employees shall be subject to the provisions of section one hundred and fifty.

This section shall not apply to an employee of a hospital which is supported in part by contributions from the commonwealth or from any city or town, nor to an employee of an incorporated hospital which provides treatment to patients free of charge, or which is conducted as a public charity, unless such employee requests such hospital to pay him weekly. This section shall not apply to an employee of a co-operative association if he is a shareholder therein, unless he requests such association to pay him weekly, nor to casual employees as hereinbefore defined employed by the commonwealth or by any county, city or town.

No person shall by a special contract with an employee or by any other means exempt himself from this section or from section one hundred and fifty. The president and treasurer of a corporation and any officers or agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation within the meaning of this section. Every public officer whose duty it is to pay money, approve, audit or verify pay rolls, or perform any other official act relative to payment of any public employees, shall be deemed to be an employer of such employees, and shall be responsible under this section for any failure to perform his official duty

relative to the payment of their wages or salaries, unless he is prevented from performing the same through no fault on his part.

Any employer paying wages to an employee by check or draft shall provide for such employee such facilities for the cashing of such check or draft at a bank or elsewhere, without charge by deduction from the face amount thereof or otherwise, as shall be deemed by the attorney general to be reasonable. The state treasurer may in his discretion in writing exempt himself and any other public officer from the provisions of this paragraph.

An employer paying his employees on a weekly basis on July first, nineteen hundred and ninety-two shall, prior to paying said employees on a bi-weekly basis, provide each employee with written notice of such change at least ninety days in advance of the first such bi-weekly paycheck.

Whoever violates this section shall be punished or shall be subject to a civil citation or order as provided in section 27C.

Amended by St.1932, c. 101, § 1; St.1935, c. 350; St.1936, c. 160; St.1943, c. 378; St.1943, c. 467; St.1943, c. 563; St.1946, c. 414; St.1951, c. 28; St.1955, c. 506; St.1956, c. 259; St.1960, c. 416; St.1966, c. 319; St.1970, c. 760, § 12; St.1971, c. 387; St.1971, c. 590; St.1977, c. 664; St.1979, c. 633; St.1987, c. 559, § 29; St.1990, c. 162, § 1; St.1991, c. 138, § 331; St.1992, c. 133, §§ 502 to 504; St.1993, c. 110, § 181; St.1996, c. 151, §§ 426, 427; St.1997, c. 164, § 117; St.1998, c. 236, § 10; St.2008, c. 532, eff. April 15, 2009.

St.1879, c. 128.
P.S.1882, c. 28, § 12.
St.1886, c. 87, §§ 1, 2.
St.1887, c. 399, § 1.
St.1891, c. 239, § 1.
St.1894, c. 508, §§ 51, 65.
St.1895, c. 438.
St.1896, c. 241.
St.1896, c. 334.
St.1898, c. 481.
St.1899, c. 247.
St.1900, c. 470.
R.L.1902, c. 106, § 62.
St.1902, c. 450.
St.1906, c. 427.
St.1907, c. 193.
St.1908, c. 650.
St.1909, c. 514, §§ 112, 145.
St.1910, c. 350.
St.1911, c. 208.
St.1914, c. 247.
St.1915, c. 75.
St.1916, c. 229.
St.1918, c. 87.
St.1919, c. 350, § 117.
St.1921, c. 51.
St.1923, c. 136.
St.1924, c. 145.
St.1925, c. 165.
St.1929, c. 117.

CHAPTER 150E

LABOR RELATIONS: PUBLIC EMPLOYEES

Chapter 150E of the General Laws was added by St.1973, c. 1078, § 2.

Selected section

Section

7. Collective bargaining agreements; term; appropriation requests; provisions; legal conflicts, priority of agreement.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 7. Collective bargaining agreements; term; appropriation requests; provisions; legal conflicts, priority of agreement

(a) Any collective bargaining agreement reached between the employer and the exclusive representative shall not exceed a term of three years. The agreement shall be reduced to writing, executed by the parties, and a copy of such agreement shall be filed with the commission and with the house and senate committees on ways and means forthwith by the employer.

(b) The employer, other than the board of higher education or the board of trustees of the University of Massachusetts, the chief justice for administration and management, a county sheriff, the PCA quality home care workforce council, the alcoholic beverage control commission, or the state lottery commission, shall submit to the appropriate legislative body within thirty days after the date on which the agreement is executed by the parties, a request for an appropriation necessary to fund the cost items contained therein; provided, that if the general court is not in session at that time, such request shall be submitted at the next session thereof. If the appropriate legislative body duly rejects the request for an appropriation necessary to fund the cost items, such cost items shall be returned to the parties for further bargaining. The provisions of the preceding two sentences shall not apply to agreements reached by school committees in cities and towns in which the provisions of section thirty-four of chapter seventy-one are operative.

(c) The provisions of this paragraph shall apply to the board of higher education, the board of trustees of the University of Massachusetts, the chief justice for administration and management, a county sheriff, the PCA quality home care workforce council, the alcoholic beverage control commission, Massachusetts Department of Transportation and the state lottery commission.

Every such employer shall submit to the governor, within thirty days after the date on which a collective bargaining agreement is executed by the parties, a request for an appropriation necessary to fund such incremental cost items contained therein as are required to be funded in the then current fiscal year, provided, however, that if such agreement first has effect in a subsequent fiscal year, such request shall be submitted pursuant to the provisions of this paragraph. Every such employer shall append to such request an estimate of the monies necessary to fund such incremental cost items contained therein as are required to be funded in each fiscal year, during the term of the agreement, subsequent to the fiscal year for which such request is made and shall submit to the general court within the aforesaid thirty days, a copy of such request and such appended estimate; provided, further, that every such employer shall append to such request copies of each said collective bargaining agreement, together with documentation and analyses of all changes to be made in the schedules of permanent and temporary positions required by said agreement. Whenever the governor shall have failed, within forty-five days from the date on which such request shall have been received by him, to recommend to the general court that the general court appropriate the monies so requested, the request shall be referred back to the parties for further bargaining.

(d) If a collective bargaining agreement reached by the employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations pursuant to section six of this chapter and any municipal personnel ordinance, by-law, rule or regulation; the regulations of a police chief pursuant to section ninety-seven A of chapter forty-one or of a police commissioner or other head of a police or public safety department of a municipality; the regulations of a fire chief or other head of a fire department pursu-

ant to chapter forty-eight; any of the following statutory provisions or rules or regulations made thereunder:

(a) the second paragraph of section twenty-eight of chapter seven;

(a 1/2) section six E of chapter twenty-one;

(b) sections fifty to fifty-six, inclusive, of chapter thirty-five;

(b 1/2) section seventeen *I* of chapter one hundred and eighty;

(c) section twenty-four A, paragraphs (4) and (5) of section forty-five, paragraphs (1), (4) and (10) of section forty-six, section forty-nine, as it applies to allocation appeals, and section fifty-three of chapter thirty;

(d) sections twenty-one A and twenty-one B of chapter forty;

(e) sections one hundred and eight D to one hundred and eight *I*, inclusive, and sections one hundred and eleven to one hundred and eleven *I*, inclusive, of chapter forty-one;

(f) section thirty-three A of chapter forty-four;

(g) sections fifty-seven to fifty-nine, inclusive, of chapter forty-eight;

(g 1/2) section sixty-two of chapter ninety-two;

(h) sections fourteen to seventeen E, inclusive, of chapter one hundred and forty-seven;

(i) sections thirty to forty-two, inclusive, of chapter one hundred and forty-nine;

(j) section twenty-eight A of chapter seven;

(k) sections forty-five to fifty, inclusive, of chapter thirty;

(*l*) sections thirty, thirty-three and thirty-nine of chapter two hundred and seventeen;

(m) sections sixty-one, sixty-three and sixty-eight of chapter two hundred and eighteen;

(n) sections sixty-nine to seventy-three, inclusive, and seventy-five, eighty and eighty-nine of chapter two hundred and twenty-one;

(*o*) section fifty-three C of chapter two hundred and sixty-two;

(p) sections eighty-four, eighty-five, eighty-nine, ninety-four and ninety-nine B of chapter two hundred and seventy-six;

(q) section eight of chapter two hundred and eleven B, the terms of the collective bargaining agreement shall prevail.

Added by St.1973, c. 1078, § 2. Amended by St.1974, c. 589, § 1; St.1976, c. 480, § 21; St.1977, c. 278, § 4; St.1977, c. 937, § 3; St.1978, c. 478, § 77; St.1979, c. 342, § 13B; St.1980, c. 329, §§ 125, 126; St.1980, c. 354, § 17A; St.1983, c. 248; St.1986, c. 222; St.1987, c. 40; St.1991, c. 142, §§ 26, 27; St.1992, c. 379, §§ 31, 32; St.1996, c. 12, §§ 7, 8; St.1997, c. 66, § 23; St.1998, c. 9; St.1998, c. 194, §§ 186, 187; St.2003, c. 140, § 36, eff. July 1, 2003; St.2007, c. 42, § 8, eff. May 16, 2007; St.2009, c. 25, § 100, eff. July 1, 2009; St.2010, c. 359, § 24, eff. Oct. 15, 2010.

CHAPTER 160

RAILROADS

Selected section

Section
87. Limitation upon tax exemption.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 87. Limitation upon tax exemption

Land, outside the location of the railroad five rods in width, taken or purchased for railroad, depot or station purposes shall not be exempt from taxation.

Historical and Statutory Notes

St.1853, c. 351, § 3.
G.S.1860, c. 63, § 20.
St.1874, c. 372, § 62.
P.S.1882, c. 112, § 92.
St.1895, c. 356.
R.L.1902, c. 111, § 96
St.1906, c. 463, pt. 2, §§ 79, 258.

CHAPTER 164

MANUFACTURE AND SALE OF GAS AND ELECTRICITY

Selected sections

Section

56. Management of plant.
56A. Municipal light commission; definition; contracts of members.
56B. Contracts of commission; requisites.
56C. Contracts of commission; filing with city or town auditor; preservation; public inspection; penalty.
56D. Contracts of commission; advertisements and bids; application of section.
57. Manager's annual financial report; tax levy; expenditure of income.
57A. Appropriations for maintenance and operation; payment in advance of receipts.

Section

58B. Lien upon real estate for nonpayment of service charges.
58C. Time for and length of lien.
58D. Unpaid charges added to real estate taxes.
58E. Interest on taxes due by reason of unpaid charges.
58F. Abatement of real estate tax imposed by reason of unpaid charges.
69A. Purchase, sale and distribution of natural gas by municipality.
143. Small municipal renewable energy generating facilities; issuance of bonds and notes; procurement of required services; receipt and use of revenues.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 56. Management of plant

The mayor of a city, or the selectmen or municipal light board, if any, of a town acquiring a gas or electric plant shall appoint a manager of municipal lighting who shall, under the direction and control of the mayor, selectmen or municipal light board, if any, and subject to this chapter, have full charge of the operation and management of the plant, the manufacture and distribution of gas or electricity, the purchase of supplies, the employment of attorneys and of agents and servants, the method, time, price, quantity and quality of the supply, the collection of bills, and the keeping of accounts. His compensation and term of office shall be fixed in cities by the city council and in towns by the selectmen or municipal light board, if any; and, before entering upon the performance of his official duties, he shall give bond to the city or town for the faithful performance thereof in a sum and form and with sureties to the satisfaction of the mayor, selectmen or municipal light board, if any, and shall, at the end of each municipal year, render to them such detailed statement of his doings and of the business and financial matters in his charge as the department may prescribe. All moneys payable to or received by the city, town, manager or municipal light board in connection with the operation of the plant, for the sale of gas or electricity or otherwise, shall be paid to the city or town treasurer. All accounts rendered to or kept in the gas or electric plant of any city shall be subject to the inspection of the city auditor or officer having similar duties, and in towns they shall be subject to the inspection of the selectmen. The auditor or officer having similar duties, or the selectmen, may require any person presenting for settlement an account or claim against such plant to make oath before him or them, in such form as he or they may prescribe, as to the accuracy of such account or claim. The wilful making of a false oath shall be punishable as perjury. The auditor or officer having similar duties in cities, and the selectmen in towns, shall approve the payment of all bills or payrolls of such plants before they are paid by the treasurer, and may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive; and in that case the auditor or officer having similar duties, or the selectmen, shall file with the city or town treasurer a written statement of the reasons for the refusal; and the treasurer shall not pay any claim or bill so disallowed. This section shall not abridge the powers conferred on town accountants by sections fifty-five to sixty-one, inclusive, of chapter forty-one. The manager shall at any time, when required by the mayor, selectmen, municipal light board, if any, or department, make a statement to such officers of his doings, business, receipts, disbursements, balances, and of the indebtedness of the town in his department.

Amended by St.1958, c. 160; St.1998, c. 463, § 136.

Historical and Statutory Notes

St.1891, c. 370, § 8.
St.1893, c. 454, § 10.
R.L.1902, c. 34, § 20.
St.1905, c. 410, § 3.
St.1914, c. 742, §§ 113, 199.
St.1929, c. 266.

§ 56A. Municipal light commission; definition; contracts of members

The words "municipal light commission" as used in this section and in sections fifty-six B to fifty-six E, inclusive, shall mean a light commission, gas and electric commission or similar body established by act of the legislature and vested with all powers and duties formerly exercised by the mayor and selectmen under this chapter, and with the powers and duties conferred upon municipal light boards under this chapter.

No member of a municipal light commission or manager thereof shall directly or indirectly make a contract with the city or municipal lighting plant or receive any commission, discount, bonus, gift, contribution or reward from or any share in the profits of any person making or performing such contract unless such member or manager immediately upon learning of the existence of such contract, or that such contract is proposed, shall notify in writing the municipal light commission or city of the nature of his interest in such contract and shall abstain from doing any official act on behalf of the commission or plant in reference thereto.

A violation of any provision of this section shall render the contract in respect to which such violation occurs voidable at the option of the commission. Any person violating the provisions of this section shall be punished by a fine of not less than fifty nor more than one thousand dollars or by imprisonment for not more than one year, or both.

This section shall not apply to contracts of employment between a municipal lighting plant and its manager.

This section shall not apply to contracts between the city or municipal lighting plant and a corporation of which the member or manager is a stockholder or bondholder, unless the member or manager or a member of his immediate family owns or controls more than one per cent of the capital stock or more than one per cent of the outstanding bonds of such corporation.

Added by St.1960, c. 643.

§ 56B. Contracts of commission; requisites

All contracts made by a municipal light commission where the amount involved is five thousand dollars or more shall be in writing. Any contract made as aforesaid may be required to be accompanied by a bond with sureties satisfactory to the municipal light commission, or by a deposit of money, certified check or other security for the faithful performance thereof, and such bonds or other securities shall be deposited with the city or town treasurer until the contract has been carried out in all respects; and no such contract shall be altered except by a written agreement of the contractor, the sureties on his bond, if any, and the officer or members of the municipal light commission making the contract.

Added by St.1960, c. 643. Amended by St.1991, c. 283, § 1.

§ 56C. Contracts of commission; filing with city or town auditor; preservation; public inspection; penalty

Every municipal light commission or manager thereof, who makes or executes a contract on behalf of a municipal lighting plant, where the amount involved is five thousand dollars or more, shall furnish said contract or a copy thereof to the city or town auditor within one week after its execution. Said city or town auditor shall keep such contract or copy on file, open to public inspection during business hours. Such contracts or copies shall be kept in a separate book, arranged according to the subject of the contract, or in other convenient form. An index of the subject matter of the contracts and to the names of the contractors shall be made semi-annually, and shall also be open to public inspection in some convenient form. All allowances under and additions to such contracts, or copies thereof, shall be filed with the city or town auditor, together with a sworn statement of the officer making such allowances or additions that the same are correct and in accordance with the contract. A city or town auditor, municipal light commissioner or manager wilfully failing to comply with this section shall be punished by a fine of not less than ten nor more than one hundred dollars.

Added by St.1960, c. 643. Amended by St.1991, c. 283, § 2.

§ 56D. Contracts of commission; advertisements and bids; application of section

No contract for the purchase of equipment, supplies or materials, the actual or estimated cost of which amounts to $25,000 or more, and no contract for the purchase of generation, transmission or distribution equipment, the actual cost or estimated cost of which amounts to $25,000 or more, except in cases of special emergencies involving the

health, safety or welfare of the people or their property, shall be awarded unless proposals for the same have been invited by advertisement in at least one newspaper published in the city or town in which the lighting plant is located, or, if there is no such newspaper, in a newspaper published in the same county, such publication to be at least one week before the time specified for the opening of said proposals. Such advertisement shall state the time and place for opening the proposals in answer to said advertisement, and shall reserve to the municipal light commission the right to reject any or all such proposals. All such proposals shall be opened in public. No bill or contract shall be split or divided for the purpose of evading any provision of this section. This section shall not apply to contracts for the supply of electricity to a municipal lighting plant.

Added by St.1960, c. 643. Amended by St.1968, c. 16; St.1978, c. 301; St.1981, c. 226, § 1; St.1991, c. 283, § 3; St.1997, c. 164, § 198; St.2001, c. 130, §§ 1, 2.

§ 57. Manager's annual financial report; tax levy; expenditure of income

At the beginning of each fiscal year, the manager of municipal lighting shall furnish to the mayor, selectmen or municipal light board, if any, an estimate of the income from sales of gas and electricity to private consumers during the ensuing fiscal year, and of the expense of the plant during said year, meaning the gross expenses of operation, maintenance and repair, the interest on the bonds, notes or certificates of indebtedness issued to pay for the plant, an amount for depreciation equal to three per cent of the cost of the plant exclusive of land and any water power appurtenant thereto, or such smaller or larger amount as the department may approve, the requirements of the sinking fund or debt incurred for the plant, and the loss, if any, in the operation of the plant during the preceding year, and of the cost, as defined in section fifty-eight, of the gas and electricity to be used by the town. The town shall include in its annual appropriations and in the tax levy not less than the estimated cost of the gas and electricity to be used by the town as above defined and estimated. By cost of the plant is intended the total amount expended on the plant to the beginning of the fiscal year for the purpose of establishing, purchasing, extending or enlarging the same. By loss in operation is intended the difference between the actual income from private consumers plus the appropriations for maintenance for the preceding fiscal year and the actual expense of the plant, reckoned as above, for that year in case such expenses exceeded the amount of such income and appropriation. The income from sales and the money appropriated as aforesaid shall be used to pay the annual expense of the plant, defined as above, for the fiscal year, except that no part of the sum therein included for depreciation shall be used for any other purpose than renewals in excess of ordinary repairs, extensions, reconstruction, enlargements and additions. The surplus, if any, of said annual allowances for depreciation after making the above payments shall be kept as a separate fund and used for renewals other than ordinary repairs, extensions, reconstructions, enlargements and additions in succeeding years, and for the cost of plant, nuclear decommissioning costs, the costs of contractual commitments, and deferred costs related to such commitments which the city council, the board of selectmen, or the municipal light board, if any, determines are above market value. Said depreciation fund shall be kept and managed by the town treasurer as a separate fund, subject to appropriation by the city council or selectmen or municipal light board, if any, for the foregoing purpose. Upon his own initiative or upon the request of the city council, selectmen or municipal light board, the treasurer shall invest or deposit the same as permitted by section fifty-five A of chapter forty-four, and any income thereon shall be credited to the depreciation fund. So much of said fund as the department may from time to time approve may also be used to pay notes, bonds or certificates of indebtedness issued to pay for the cost of reconstruction or renewals in excess of ordinary repairs, when such notes, bonds or certificates of indebtedness become due. All appropriations for the plant shall be either for the annual expense defined as above, or for extensions, reconstruction, enlargements or additions; and no appropriation shall be used for any purpose other than that stated in the vote making the same. No bonds, notes or certificates of indebtedness shall be issued by a town for the annual expenses as defined in this section.

Amended by St.1963, c. 347, § 3; St.1977, c. 327; St.1997, c. 164, § 199.

Historical and Statutory Notes

St.1891, c. 370, §§ 4, 8.
R.L.1902, c. 34, § 21.
St.1905, c. 410, § 4.
St.1906, c. 411.
St.1908, c. 486.
St.1914, c. 742, §§ 114, 199.
St.1918, c. 77, § 1.
St.1931, c. 426, § 77.

§ 57A. Appropriations for maintenance and operation; payment in advance of receipts

Any city or town having a municipal light plant may appropriate money for the maintenance and operation of such plant, specifying that the same shall be taken from the receipts of the department; and where such appropriations are made, the city or town treasurer may, in advance of the collection of said receipts, pay bills on account of the said appropriations, and any sum so advanced shall be repaid to the city or town from such receipts, when collected, and shall be applied as reimbursement to the city or town, or to the payment of any temporary loan made by the city or town in anticipation of revenue of that year.

Historical and Statutory Notes

St.1922, c. 184.

§ 58B. Lien upon real estate for nonpayment of service charges

If the rates and charges due to a municipal lighting plant, which accepts the provisions of this section and sections fifty-eight C to fifty-eight F, inclusive, by vote of its municipal light board, as defined in section sixty-nine B and, by its manager of municipal lighting, files a certificate of such acceptance in the proper registry of deeds and files a copy of said certificate with the collector of taxes of the city or town in which the lien hereinafter mentioned is to take effect, for supplying or providing for gas, electricity, steam, or services, or furnishing materials or appliances in connection therewith to or for any real estate at the request of the owner are not paid on or before their due date as established by the municipal light board, such rates and charges, together with interest due thereon and costs, including attorneys fees, relative thereto, shall be a lien upon such real estate. The registrar of deeds shall record such certificate of acceptance in a book to be kept for the purpose, which shall be kept in an accessible location in the registry of deeds.

Added by St.1980, c. 551. Amended by St.1981, c. 145, § 1.

§ 58C. Time for and length of lien

Such lien shall take effect by operation of law on the day immediately following the due date of such rate or charge, and, unless dissolved by payment or abatement, shall continue until such rate or charge has been added to or committed as a tax under section fifty-eight D, and thereafter, unless so dissolved, shall continue as provided in section thirty-seven of chapter sixty; provided, however, that if any such rate or charge is not added to or committed as a tax under section fifty-eight D for the next fiscal year commencing after the inception of the lien under this section, then said lien shall terminate on October first of the third year following the year in which such charge becomes due.

Notwithstanding such lien any such overdue rate or charge may be collected through any legal means, including the shutting off of gas, electricity, steam or services, which may be deemed advisable; provided, that after the termination of such a lien, no city, town or municipal lighting plant shall attempt to enforce, by shutting off the gas, electricity, steam or service, collection of such rate or charge from any person, not liable therefor, who has succeeded to the title or interest of the person incurring such rate or charge.

Added by St.1980, c. 551. Amended by St.1989, c. 469, § 3.

§ 58D. Unpaid charges added to real estate taxes

If a rate or charge for which a lien is in effect under section fifty-eight C has not been added to or committed as a tax and remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed by them under section fifty-three of chapter fifty-nine, the manager of municipal lighting shall certify such rate or charge to the assessors, who shall forthwith add such rate or charge to the tax on the property to which it relates and commit it with their warrant to the collector of taxes as part of such tax. If the property to which such tax or rate relates is tax exempt, such rate or charge shall be committed as the tax.

Added by St.1980, c. 551.

§ 58E. Interest on taxes due by reason of unpaid charges

Except as otherwise provided, the provisions of chapters fifty-nine and sixty shall apply, so far as pertinent, to all rates and charges certified to the assessors under section fifty-eight D. Without limiting the generality of the foregoing, upon commitment as a tax or part of a tax under section fifty-eight D, all such rates and charges shall be subject to the provisions of law relative to interest on the taxes of which they become, or, if the property were not tax exempt would become, a part; and the collector of taxes shall have the same powers

and be subject to the same duties with respect to such rates and charges as in the case of annual taxes upon real estate, and the provisions of law relative to the collection of such annual taxes, the sale or taking of land for the nonpayment thereof and the redemption of land so sold or taken shall, except as otherwise provided, apply to such rates and charges.

Upon collection of such rates or charges certified to the assessors under section fifty-eight D, the city or town shall appropriate said amount solely for the purposes of the municipal lighting plant.
Added by St.1980, c. 551.

§ 58F. Abatement of real estate tax imposed by reason of unpaid charges

An owner of real estate aggrieved by a charge imposed thereon under sections fifty-eight B to fifty-eight E, inclusive, may apply for an abatement thereon by filing a petition with the municipal light board, as defined in section sixty-nine B, within the time allowed by law for filing an application for abatement of the tax of which such charge is, or, if the property were not tax exempt, would have been a part, and if such board finds that such charge is more than is properly due, a reasonable abatement shall be made.
Added by St.1980, c. 551.

§ 69A. Purchase, sale and distribution of natural gas by municipality

Any city or town which maintains or operates a municipal lighting plant which includes a gas plant may purchase, sell and distribute natural gas, and the provisions of sections thirty-four to sixty-nine, inclusive, so far as apt, shall apply to the purchase, sale and distribution by such city or town of natural gas. Every such city or town purchasing, selling and distributing natural gas shall have all the powers and be subject to all the liabilities of said sections, including the authority to borrow money for the establishment, extension or enlargement of a plant and providing facilities for the purchase, sale and distribution of natural gas.
Added by St.1950, c. 419.

§ 143. Small municipal renewable energy generating facilities; issuance of bonds and notes; procurement of required services; receipt and use of revenues

(a) For the purposes of this section, the term "small municipal renewable energy generating facility" shall mean a generating unit that is designed for, or capable of, operating at a gross capacity of less than 10 megawatts and that qualifies as a Class I renewable energy generating source under section 11F of chapter 25A.

(b) Notwithstanding any general or special law to the contrary, a municipality may design, install, own and operate small municipal renewable energy generating facilities, sell any electricity generated from such facilities and sell any other marketable products resulting from its generation of renewable energy at such facilities, including electronic certificates created to represent the generation attributes, as defined in 225 CMR 14.02, of each megawatt hour of energy generated by the renewable energy facilities; provided, however, that no later than 15 days after the initiation of a procurement of services, equipment or materials related to a small municipal renewable energy generating facility and again no later than 15 days after the date that such small municipal renewable energy generating facility first produces electrical energy, said municipality shall submit a report to the department of public utilities and the department of energy resources detailing the costs of the small municipal renewable energy generating facility and a plan and forecast for the disposition of the facility's products. The department of energy resources shall annually issue a report containing information on small municipal renewable energy generating facilities, including the number, capacity, production and performance of such facilities and recommendations, if any, for additional legislative action to increase the benefits available to municipalities through ownership of renewable energy generating facilities. The department of energy resources shall submit such report, including drafts of legislation to implement recommendations within such report, to the joint committee on telecommunications, utilities and energy and the senate and house committees on ways and means not later than April 30 of each year.

(c) A municipality may issue from time to time bonds or notes in order to finance all or a portion of the costs of small municipal renewable energy generating facility projects authorized under this section. Notwithstanding any provision of chapter 44 to the contrary, the maturities of any such bonds issued by a municipality hereunder either shall be arranged so that for each issue the annual combined payments of principal and interest payable in each year, commencing with the first year

in which a principal payment is required, shall be as nearly equal as practicable in the opinion of the municipal treasurer or shall be arranged in accordance with a schedule providing for a more rapid amortization of principal. The first payment of principal of each issue of bonds or of any temporary notes issued in anticipation of the bonds shall be not later than 5 years after the anticipated date of commencement of the regular operation of the small municipal renewable energy generating facilities financed thereby, as determined by the municipal treasurer, and the last payment of principal of the bonds shall be not later than 25 years from the date of the bonds. Indebtedness incurred under this section shall not be included in determining the limit of indebtedness of a municipality under section 10 of said chapter 44 but, except as otherwise provided in this subsection, shall be subject to the provisions of said chapter 44.

(d) A municipality shall procure any services required for the design, installation, improvement, repair and operation of small municipal renewable energy generating facilities authorized under this section, and acquire any equipment necessary in connection therewith, in accordance with the procurement requirements of chapter 30B as applicable. A municipality may procure any such services and equipment together as 1 procurement or as separate procurements thereunder.

(e) A municipality may establish an enterprise fund under section 53F½ of chapter 44 for the receipt of all revenues from the operation of small municipal renewable energy generating facilities authorized under this section to operate and all moneys received for the benefit of such small municipal renewable energy generating facilities, other than the proceeds of bonds or notes issued therefor. Such receipts shall be used to pay the costs of operation and maintenance of the small municipal renewable energy generating facilities, to pay the costs of future improvements and repairs thereto and to pay the principals and interest on any bonds or notes issued therefor.

Added by St.2008, c. 169, § 78, eff. July 2, 2008.

CHAPTER 175

INSURANCE

Selected section

Section

97A. Payment of proceeds; certificate of municipal liens; priority; exclusion.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 97A. Payment of proceeds; certificate of municipal liens; priority; exclusion

Notwithstanding any provision to the contrary of any general or special law, every company shall, before paying any claim for loss or damage to real property from any hazard, where the amount of the loss payable under the policy equals or exceeds five thousand dollars, first require the claimant to submit to the company a certificate of municipal liens from the collector of taxes of the city or town wherein such property is located.

Said company shall pay to the city or town any amounts shown on the certificate of municipal liens as outstanding on the date of loss and upon which interest is accruing as of the said date of loss, arising from the provisions of chapters forty, fifty-nine, sixty, eighty, eighty-three and section fifty-eight B to fifty-eight F, inclusive, of chapter one hundred and sixty-four to the extent of the amount of loss payable under the policy and a copy of said transaction shall be sent to the insured and mortgagees named on the policy.

The claim of the city or town for such amounts shall have priority over the claim of any insured owner, mortgagee, assignee or other interested party except where otherwise provided by the laws of the United States.

Said company shall not be liable to any insured owner, mortgagee, assignee, city or town, or other interested party for amounts disbursed to a city or town under this section or for amounts not disbursed to said city or town based upon a certificate indicating the nonexistence of any municipal liens.

The provisions of this section shall not apply to owner-occupied one, two, three or four family dwellings, provided, however, that the owners of said dwellings must be domiciled in said dwellings at the time the claim for loss or damage arose. Added by St.1977, c. 804, § 2. Amended by St.1983, c. 72, § 7; St.1983, c. 162; St.1985, c. 464, § 1.

CHAPTER 180

CORPORATIONS FOR CHARITABLE AND CERTAIN OTHER PURPOSES

Selected sections

Section

17A. Pay-roll deductions for union dues of employees of state, county or municipality.

17B. Community chest, united fund, scholarship, etc.; pay-roll deductions of town, county or state employees.

17C. Associations of public school teachers; payroll deductions for dues.

17D. School teachers; payroll deductions for income protection insurance premiums.

17E. School nurses; payroll deductions for dues to associations of teachers.

Section

17G. State, county or municipal employees; payroll deductions for payment of service fees to collective bargaining agencies.

17H. Public employees; payroll deductions for periodic pass for public transportation.

17*I*. Payroll deductions for public school teachers.

17J. Public employees; payroll deductions for insurance or employee benefits.

17L. Public employee; payroll deductions for qualified state tuition program.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 17A. Pay-roll deductions for union dues of employees of state, county or municipality

Deductions on pay-roll schedules may be made from the salary of any state, county or municipal employee of any amount which such employee may specify in writing to any state, county or municipal officer, or the head of the state, county or municipal department, board or commission, by whom or which he is employed, for the payment of union dues to an association of state, county or municipal employees, dues to the Massachusetts State Employees Association, dues to the Massachusetts Nurses Association, or dues payable to any relief association of any municipal department. Any such authorization may be withdrawn by the employee by giving at least sixty days' notice in writing of such withdrawal to the state, county or municipal officer, or the head of the state, county or municipal department, board or commission, by whom or which he is then employed and by filing a copy thereof with the treasurer of the association.

The state treasurer, the common paymaster as defined in section one hundred and thirty-three of chapter one hundred and seventy-five, or the treasurer of the county or municipality by which such employee is employed, shall deduct from the salary of such employee such amount of union dues, dues to the Massachusetts State Employees Association, dues to the Massachusetts Nurses Association, or dues payable to any relief association of any municipal department as may be certified to him on the payroll, and transmit the sum so deducted to the treasurer of said association; provided, that the state treasurer or the county or municipal treasurer, as the case may be, is satisfied by such evidence as he may require that the treasurer of such association has given to said association a bond, in a form approved by the commissioner of revenue, for the faithful performance of his duties, in a sum and with such surety or sureties as are satisfactory to the state treasurer or county or municipal treasurer; and provided, further, that whenever an association or union of state, county, or municipal employees is certified or obtains consent recognition under the provisions of chapter one hundred and fifty E, such deductions shall be made for dues only to the certified or recognized association or union.

This section shall be effective in any county, city or town which has accepted it in the manner provided by section two of chapter seven hundred and forty of the acts of nineteen hundred and fifty, or which accepts it in the following manner:—In a county by vote of the county commissioners; in a city having a Plan D or Plan E charter by majority vote of its city council; in any other city by vote of its city council, approved by the mayor; and in a town by vote of the board of selectmen.

Added by St.1950, c. 740, § 1. Amended by St.1954, c. 678; St.1964, c. 343, § 1; St.1964, c. 431; St.1966, c. 39, §§ 1, 2; St.1969, c. 472; St.1973, c. 1078, § 2C; St.1978, c. 514, § 221.

§ 17B. Community chest, united fund, scholarship, etc.; pay-roll deductions of town, county or state employees

Deductions on pay-roll schedules may be made from the salary of any town, county or state employee of any amount which such employee may specify in writing to the officer, or the head of the department, board or commission, by whom or

which he is employed, for the payment of a contribution to a community chest or united fund, or to scholarship and other fundraising initiatives that benefit a public institution of higher education, its affiliates and foundations as listed in section 5 of chapter 15A. Any such authorization may be withdrawn by the employee by giving at least sixty days' notice in writing of such withdrawal to the officer, or the head of the department, board or commission, by whom or which he is then employed. The treasurer of the town, county or state shall deduct from the salary of such employee such amount of contribution as may be certified to him on the payroll and transmit the sum so deducted to the community chest or united fund, or to scholarship and other fundraising initiatives that benefit a public institution of higher education, its affiliates and foundations as listed in section 5 of chapter 15A; provided, that the town, county or state treasurer is satisfied by such evidence as he may require that the treasurer of such community chest or united fund has given to said community chest or united fund a bond, in a form approved by the commissioner, for the faithful performance of his duties, in a sum and with such surety or sureties as are satisfactory to the town, county or state treasurer.

Added by St.1956, c. 489, § 1. Amended by St.1959, c. 452; St.2006, c. 360, § 1, eff. Feb. 14, 2007.

§ 17C. Associations of public school teachers; payroll deductions for dues

Deductions on payroll schedules may be made from the salaries of a school teacher for the current dues of teacher associations, local, county, state or national, as authorized by such teacher in writing to the city, town or district school committee by which he is employed. Any such authorization may be withdrawn by such teacher by giving at least sixty days' notice in writing of such withdrawal to said school committee. The specific amount of the current dues of each of said associations shall be certified to the school committee by the local association treasurer on or before September fifteenth of each school year. The treasurer of the city, town or district shall deduct from the salary of such teacher such amount of dues as may be certified to him on the payroll and transmit the sum so deducted to said association within thirty days of such deduction; provided, that the city, town or district treasurer is satisfied by such evidence as he may require that the treasurer of such association has given to said association a bond, in a form approved by the commissioner of revenue, for the faithful performance of his duties, in a sum and with such surety or sureties as are satisfactory to the city, town or district treasurer. This section shall take effect in each city, town or regional school district which accepts the provisions hereof by vote of its school committee.

Added by St.1962, c. 175. Amended by St.1973, c. 113; St.1975, c. 307; St.1975, c. 346; St.1978, c. 514, § 222.

§ 17D. School teachers; payroll deductions for income protection insurance premiums

With the approval of a school committee deductions may be made from the salary of a school teacher of any amount which such teacher may specify in writing to the city, town or district school committee by which he is employed for the payment of premiums for income protection insurance, and upon notification of such approval the treasurer of the city, town or district shall deduct from the salary of such teacher such amount of premium as may be certified to him on the payroll and transmit the sum so deducted to the insurance company providing said income protection insurance. Authorization by a school teacher for such deductions may be withdrawn by him by giving at least sixty days' notice in writing of such withdrawal to said school committee.

Added by St.1967, c. 324.

§ 17E. School nurses; payroll deductions for dues to associations of teachers

A city, town or regional school district may provide for deductions on payroll schedules from the salary of a school nurse for the payment of dues to an association of teachers in the same manner and subject to the same conditions as provided in section seventeen C.

Added by St.1968, c. 180.

§ 17G. State, county or municipal employees; payroll deductions for payment of service fees to collective bargaining agencies

Deductions on payroll schedules shall be made from the salary of any state, county or municipal employee of any amount which such employee may specify in writing to any state, county or municipal officer, or the head of the state, county or municipal department, board or commission, by whom or which he is employed or which may be specified by a collective bargaining agreement with the PCA

quality home care workforce council for the payment of agency service fees to the employee organization, which, in accordance with the provisions of chapter one hundred and fifty E is duly recognized by the employer or designated by the labor relations commission as the exclusive bargaining agent for the appropriate unit in which such employee is employed. The amount of such agency service fee shall be as provided in section twelve of chapter one hundred and fifty E. Any such authorization may be withdrawn by the employee by giving at least sixty days' notice in writing of such withdrawal to the state, county or municipal officer, or the head of the state, county or municipal department, board or commission, by whom or which he is then employed, and by filing a copy thereof with the treasurer of the employee organization.

The state treasurer, the common paymaster as defined in section one hundred and thirty-three of chapter one hundred and seventy-five, or the treasurer of the county or municipality by which such employee is employed shall deduct from the salary of such employee such amount of agency service fees as may be certified to him on the payroll and transmit the sum so deducted to the treasurer of such employee organization; provided that the state treasurer or county or municipal treasurer, as the case may be, is satisfied by such evidence as he may require that the treasurer of such employee organization has given to said organization a bond, in a form approved by the commissioner of revenue for the faithful performance of his duties, in such sum and with such surety or sureties as are satisfactory to the state treasurer, or the county or municipal treasurer.

The provisions of this section shall not be applicable to the city of Boston.

Added by St.1970, c. 463, § 2. Amended by St.1971, c. 281; St.1973, c. 1078, § 3; St.1978, c. 280; St.1978, c. 514, § 223; St.2009, c. 45, § 1, eff. July 1, 2009.

§ 17H. Public employees; payroll deductions for periodic pass for public transportation

Deductions on pay-roll schedules may be made from the salary of any state, county or municipal or other public employee of an amount which such employee may specify in writing to any state, county, municipal or other public officer, or the head of the state, county, municipal or public department, board, commission or agency by whom or which he is employed, for the payment of the cost of a periodic pass for public transportation for such time and for such amount as the Massachusetts Bay Transportation Authority or any regional transportation authorities may provide. Any such authorization may be withdrawn by the employee by giving at least sixty days' notice in writing of such withdrawal to the state, county, municipal or public officer, or the head of the state, county, municipal or public department, board, commission or agency by whom or which he is then employed.

The state treasurer, the common paymaster as defined in section one hundred and thirty-three of chapter one hundred and seventy-five, or the treasurer of the county, municipality or other public agency by which such employee is employed, shall deduct from the salary of such employee such amount for such periodic pass as may be certified to him on the pay-roll, and transmit the sum so deducted to the treasurer of said Authority.

This section shall be effective in any county, city or town which has accepted it in the manner provided by section two of chapter seven hundred and forty of the acts of nineteen hundred and fifty, or which accepts it in the following manner:—In a county by vote of the county commissioners; in a city having a Plan D or Plan E charter by majority vote of its city council; in any other city by vote of its city council, approved by the mayor; and in a town by vote of the board of selectmen.

Added by St.1973, c. 1140, § 17.

§ 17I. Payroll deductions for public school teachers

A single deduction on payroll schedules shall be made from the salary of any school teacher in an amount which such teacher may specify in writing to the city, town or district school committee by which he is employed; provided, however, that no specific deduction shall be made for the payment of contributions to political campaign committees or political campaign organizations. Any such authorization may be withdrawn by such teacher by giving at least sixty days' notice in writing of such withdrawal to said school committee. The treasurer of the city, town or district shall deduct from the salary of such teacher such amount as may be certified to him on the payroll and shall transmit the sum so deducted to the state teacher association of which such teacher is a member within thirty days; provided, that the city, town or district treasurer is satisfied by such evidence as he may require that the treasurer of such state teacher

association has given a bond, in form approved by the commissioner of corporations and taxation, for the faithful performance of his duties, in a sum and with such surety or sureties as are satisfactory to the city, town or district treasurer. The provisions of this section shall take effect in each city, town or regional school district which accepts the provisions hereof by vote of its school committee.

Added by St.1977, c. 852.

§ 17J. Public employees; payroll deductions for insurance or employee benefits

Deductions on payroll schedules may be made from the salary of any state, county, municipal or other public employee of an amount which such employee may specify in writing to any state, county or municipal officer, or public department head, board, commission or agency by whom or which he is employed, for any insurance or employee benefit offered in conjunction with the employee organization, which, in accordance with the provisions of chapter one hundred and fifty E is duly recognized by the employer or designated by the labor relations commission as the exclusive bargaining agent for the appropriate unit in which such employee is employed; provided, however, that such purpose has been approved by the comptroller. Deductions in an amount determined by the employee and in compliance with applicable law may also be made for any committee on political education designated by the employee pursuant to this section. The approval of the comptroller shall not be required for such deductions. All deductions pursuant to this section shall be made without charge to any person or entity. Any such authorization may be withdrawn by the employee by giving at least sixty days notice in writing to the state, county or municipal officer, or public department head, board, commission or agency by whom or which he is then employed.

The state treasurer, the common paymaster, as defined in section one hundred and thirty-three of chapter one hundred and seventy-five, or the treasurer of the county or municipality by which such employee is employed, shall deduct from the salary of such employee such amount of authorized deductions as may be certified to him on the payroll and transmit the sum so deducted to the recipient specified by such employee.

Added by St.1981, c. 637; St.1981, c. 723. Amended by St.2003, c. 140, § 49, eff. Nov. 26, 2003.

§ 17L. Public employee; payroll deductions for qualified state tuition program

Deductions on payroll schedules may be made from the salary of a state, county, municipal or other public employee of an amount which such employee may specify in writing to any state, county or municipal officer or public department head, board, commission or agency by whom or which he is employed, for deposit into a "qualified state tuition program" as defined under the Internal Revenue Code and any prepaid tuition program established under general or special law if such purpose has been approved by the comptroller. An employee may withdraw such authorization for the deduction by giving at least 60 days notice in writing to the state, county or municipal officer or public department head, board, commission or agency by whom or which he is then employed. The state treasurer, the common paymaster as defined in section 133 of chapter 175, or the treasurer of the county, municipality or other public employer by which such employee is employed shall deduct from the salary of such employee such amount of authorized deductions as may be certified to him on the payroll and transmit the sum to the specified tuition program.

Added by St.2000, c. 384, § 22.

CHAPTER 183A

CONDOMINIUMS

Chapter 183A of the General Laws was added by St.1963, c. 493, § 1.

Selected section

Section

14. Taxation and betterment assessments; lien.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 14. Taxation and betterment assessments; lien

Each unit and its interest in the common areas and facilities shall be considered an individual parcel of real estate for the assessment and collection of real estate taxes but the common areas and facilities, the building and the condominium shall not be deemed to be a taxable parcel. Except as provided in section 53E¾ of chapter 44 and section 127B½ of chapter 111, betterment assessments or portions thereof, annual sewer use charges, water rates and charges and all other assessments, or portions thereof, rates and charges of every nature due to a city, town or district with respect to the condominium or any part thereof, other than real estate taxes, may be charged or assessed to the organization of unit owners; provided, however, that any lien of the city, town or district provided by law therefor shall attach to the units in proportion to the percentages, set forth in the master deed on record, of the undivided interests of the respective units in the common areas and facilities.

Added by St.1963, c. 493, § 1. Amended by St.1998, c. 194, § 196; St.2010, c. 188, § 64, eff. July 27, 2010.

CHAPTER 183B

REAL ESTATE TIME-SHARES

Chapter 183B of the General Laws was added by St.1987, c. 760, § 1.

Selected sections

Section

2. Definitions.
3. Estates in fee simple; estates for years; separate estates; taxes and assessments; recording documents.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 2. Definitions

As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:—

"Affiliate of a developer", any person who controls, is controlled by, or is under common control with a developer. A person controls a developer if the person is (i) a general partner, officer, director, or employer of the developer, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty per cent of the voting interest in the developer, (iii) controls in any manner the election of a majority of the directors of the developer, or (iv) has contributed more than twenty per cent of the capital of the developer. A person is controlled by a developer if the developer is (i) a general partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty per cent of the voting interest in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than twenty per cent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

"Association", the association organized under the provisions of subsection (a) of section nineteen.

"Business day", any calendar day except Saturday or Sunday, or day on which a federal, state or county holiday is celebrated.

"Conversion building", a building that at any time before the disposition of any time-share was occupied wholly or partially by persons other than purchasers and persons who occupied with the consent of purchasers.

"Developer", any person who (i) offers to dispose of or disposes of his interest in a time-share not previously disposed of, or (ii) succeeds under section twenty-two to any special developer right.

"Dispose" or "disposition", a voluntary transfer of any legal or equitable interest in a time-share, but does not include the transfer or release of a security interest.

"Enrolled", paid membership in an exchange program or membership in an exchange program evidenced by written acceptance or confirmation of membership.

"Exchange company", any person owning or operating an exchange program.

"Exchange program", any program which allows for the assignment or exchange of time-share occupancy rights between or among time-share owners in the same or other time-share properties.

"Forfeiture", full termination of any and all rights at law or in equity of a time-share owner, and of the heirs, executors, administrators, successors or assigns of the time-share owner in or arising out of the ownership of a time-share estate or a time-share license, including all rights of redemption or any other rights to cure.

"Forfeiture proceedings", shall include the process of terminating or foreclosing the rights of a time-share owner, or exercising the rights of a secured party, under a mortgage, trust deed or other security instrument which encumbers a time-share pursuant to section 29A, or the process of foreclosing a lien for assessments on a time-share pursuant to section 29 or section 29B, or both.

"Manager", any person, other than all time-share owners or the association, designated in or employed pursuant to the time-share instrument or project instrument to manage the time-share units.

"Managing entity", the manager or, if there is no manager, the association.

"Multi-location plan", a time-share plan encompassing more than one time-share property pursuant to which time-share owners may, by reservation or other similar procedure, occupy time-share units in more than one time-share property.

"Multi-location developer", a developer creating or selling its own time-shares in a multi-location plan.

"Offering", any advertisement, inducement, solicitation, or attempt to encourage any person to acquire a time-share, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a time-share in a unit not located in the commonwealth, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the unit or units are located. An offering to the "general public" shall mean any offering to twenty-five or more people.

"Person", a natural person, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity. In the case of a nominee trust, however, "person" means the beneficiary of the trust as well as the trust and the trustee.

"Project", real property, subject to a project instrument, containing more than one unit. A project may include units that are not time-share units.

"Project instrument", one or more recordable documents, by whatever name denominated, applying to the whole of a project and containing restrictions or covenants regulating the use, occupancy, or disposition of units in a project, including any amendments to the document, but excluding any law, ordinance, by-law, or governmental regulation.

"Purchaser", any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a time-share other than as security for an obligation.

"Recorded", recorded or filed in the registry of deeds or land registration office for the county or registry district wherein the property is located.

"Registry of deeds", the registry of deeds or land registration office for the county or registry district wherein the property is located.

"Sales contract", the written contract which provides for the sale by the developer and the purchase by the purchaser of one or more time-shares in a time-share property.

"Time-share", a time-share estate or a time-share license.

"Time-share estate", a right to the occupancy of a unit or any of several units during five or more separated time periods over a period of at least five years, including extension or renewal options, coupled with a freehold estate or an estate for years in a time-share property or a specified portion thereof.

"Time-share expenses", expenditures, fees, charges, or liabilities (i) incurred with respect to the time-shares or by or on behalf of all time-share owners in one time-share property, and (ii) imposed on the time-share units by the entity governing a project of which the time-share property is a part, together with any allocations to reserves, but excluding purchase money payable for time-shares. Time-share expenses shall include real estate taxes and other governmental assessments and charges with respect to the time-share property in which the time-shares are located.

"Time-share instrument", 1 or more documents, by whatever name denominated, creating or governing time-shares including, without limitation, a declaration or plan establishing a time-share regime, articles of organization and by-laws of a time-share association, rules and regulations, offering materials, sales documents, and instruments of conveyance or transfer.

"Time-share liability", the liability for time-share expenses allocated to each time-share pursuant to paragraph (4) of subsection (a) of section twelve.

"Time-share license", a right to the occupancy of a unit or any of several units during five or more separated time periods not coupled with a freehold estate or an estate for years.

"Time-share owner", a person who is an owner or co-owner of a time-share other than as security for an obligation.

"Time-share plan", the rights, obligations and program created by the time-share instrument for a time-share property or, in the case of a multi-location plan, for time-share properties.

"Time-share property", one or more time-share units subject to the same time-share instrument, together with any other real estate or rights therein appurtenant to those units.

"Time-share unit", a unit in which time-shares exist.

"Unit", real property, or a portion thereof, designated for separate use.

Added by St.1987, c. 760, § 1. Amended by St.2010, c. 350, §§ 1 to 3, eff. Jan. 4, 2011.

§ 3. Estates in fee simple; estates for years; separate estates; taxes and assessments; recording documents

(a) Except as otherwise provided in this chapter and notwithstanding any contrary rule of common law, a grant of an estate in a unit conferring the right of possession during a potentially infinite number of separated time periods creates an estate in fee simple having the character and incidents of such an estate at common law, and a grant of an estate in a unit conferring the right of possession during five or more separated time periods over a finite number of years equal to five or more, including extension or renewal options, creates an estate for years having the character and incidents of such an estate at common law.

(b) Each time-share estate constitutes for all purposes a separate estate in real property; provided, however, that a time-share property shall be considered one parcel of real estate for the assessment and collection of real estate taxes, betterment assessments or portions thereof, annual sewer use charges, water rates and charges, and all other assessments or portions thereof, rates and charges of every nature, due to a city, town or district with respect to the time-share property. Notices of assessments and bills for taxes shall be furnished to and paid by the managing entity, if any, as agent for the time-share owners, or if there is no managing entity, to each time-share owner. The managing entity shall give notice of such assessment to the time-share owners.

(c) A document transferring or encumbering a time-share estate may not be rejected for recording because of the nature or duration of such estate.

Added by St.1987, c. 760, § 1.

CHAPTER 200A

ABANDONED PROPERTY

Chapter 200A of the General Laws was added by St.1950, c. 801.

Selected section

Section

9A. Disposition of abandoned funds by city or town; notice of period during which funds may be claimed; city treasurer authorized to hear claims; appeal; disbursement.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 9A. Disposition of abandoned funds by city or town; notice of period during which funds may be claimed; city treasurer authorized to hear claims; appeal; disbursement

(a) In any city, town or district that accepts this section in the manner provided in section 4 of chapter 4, there shall be an alternative procedure for disposing of abandoned funds held in the custody of the city, town or district as provided in this section.

(b) Any funds held in the custody of a city, town or district may be presumed by the city, town or district treasurer to be abandoned unless claimed by the corporation, organization, beneficiary or person entitled thereto within 1 year after the date prescribed for payment or delivery; provided, however, that the last instrument intended as payment shall bear upon its face the statement "void if not cashed within 1 year from date of issue". After the expiration of 1 year after the date of issue, the treasurer of a city, town or district may cause the financial institution upon which the instrument was drawn to stop payment on the instrument or otherwise cause the financial institution to decline payment on the instrument and any claims made beyond that date shall only be paid by the city, town or district through the issuance of a new instrument. The city, town or district and the financial institution shall not be liable for damages, consequential or otherwise, resulting from a refusal to honor an instrument of a city, town or district submitted for payment more than a year after its issuance.

(c) The treasurer of a city, town or district holding funds owed to a corporation, organization, beneficiary or person entitled thereto that are presumed to be abandoned under this section shall post a notice entitled "Notice of names of persons appearing to be owners of funds held by (insert city, town or district name), and deemed abandoned". The notice shall specify the names of those persons who appear from available information to be entitled to such funds, shall provide a description of the appropriate method for claiming the funds and shall state a deadline for those funds to be claimed; provided, however, that the deadline shall not be less than 60 days after the date the notice was either postmarked or first posted on a website as provided in this section. The treasurer of the city, town or district may post such notice using either of the following methods: (1) by mailing the notice by first class mail, postage prepaid, to the last known address of the beneficiary or person entitled thereto; or (2) if the city, town or district maintains an official website, by posting the notice conspicuously on the website for not less than 60 days. If the apparent owner fails to respond within 60 days after the mailing or posting of the notice, the treasurer shall cause a notice of the check to be published in a newspaper of general circulation, printed in English, in the county in which the city or town is located.

(d) In the event that funds appearing to be owed to a corporation, organization, beneficiary or person is $100 or more and the deadline as provided in the notice has passed and no claim for the funds has been made, the treasurer shall cause an additional notice, in substantially the same form as the aforementioned notice, to be published in a newspaper of general circulation in the county in which the city, town or district is located; provided, however, that the notice shall provide an extended deadline beyond which funds shall not be claimed and such deadline shall be at least 1 year from the date of publication of the notice.

(e) Once the final deadline has passed under subsection (d), the funds owed to the corporation, organization, beneficiary or person entitled thereto shall escheat to the city, town or district and the treasurer thereof shall record the funds as revenue in the General Fund of the city, town or district

and the city, town or district shall not be liable to the corporation, organization, beneficiary or person for payment of those funds or for the underlying liability for which the funds were originally intended. Upon escheat, the funds shall be available to the city, town or district's appropriating authority for appropriation for any other public purpose. In addition to the notices required in this section, the treasurer of the city, town or district may initiate any other notices or communications that are directed in good faith toward making final disbursement of the funds to the corporation, organization, beneficiary or person entitled thereto.

Prior to escheat of the funds, the treasurer of the city, town or district shall hear all claims on funds that may arise and if it is clear, based on a preponderance of the evidence available to the treasurer at the time the claim is made, that the claimant is entitled to disbursement of the funds, the treasurer shall disburse funds to the claimant upon receipt by the treasurer of a written indemnification agreement from the claimant wherein the claimant agrees to hold the city, town or district and the treasurer of the city, town or district harmless in the event it is later determined that the claimant was not entitled to receipt of the funds. If it is not clear, based on a preponderance of the evidence before the treasurer at the time of the claim that the claimant is entitled to disbursement of the funds, the treasurer shall segregate the funds into a separate, interest-bearing account and shall notify the claimant of such action within 10 days. A claimant affected by this action may appeal within 20 days after receiving notice thereof to the district, municipal or superior court in the county in which the city, town or district is located. The claimant shall have a trial de novo. A party adversely affected by a decree or order of the district, municipal or superior court may appeal to the appeals court or the supreme judicial court within 20 days from the date of the decree.

If the validity of the claim shall be determined in favor of the claimant or another party, the treasurer shall disburse funds in accordance with the order of the court, including interest accrued. If the validity of the claim is determined to be not in favor of the claimant or another party or if the treasurer does not receive notice that an appeal has been filed within 1 year from the date the claimant was notified that funds were being withheld, then the funds, plus accrued interest, shall escheat to the city, town or district in the manner provided in this section.

If the claimant is domiciled in another state or country and the city, town or district determines that there is no reasonable assurance that the claimant will actually receive the payment provided for in this section in substantially full value, the superior court, in its discretion or upon a petition by the city, town or district, may order that the city, town or district retain the funds.

Added by St.1987, c. 550. Amended by St.2003, c. 46, § 108, eff. July 31, 2003; St.2010, c. 188, § 65, eff. July 27, 2010.

CHAPTER 234

JURIES

Selected section

Section

1B. Compensation of municipal employees while serving as jurors in state or federal courts.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 1B. Compensation of municipal employees while serving as jurors in state or federal courts

An employee of a city or town who serves as a grand or traverse juror in a federal court or in the courts of the commonwealth shall receive from such city or town the difference between his salary and the compensation he received for such jury service, exclusive of any travel or other allowance.

Added by St.1963, c. 172.

CHAPTER 252

IMPROVEMENT OF LOW LAND AND SWAMPS

Selected section

Section

4A. Proceedings under Secs. 1 to 14C; parties; petition; notice.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 4A. Proceedings under Secs. 1 to 14C; parties; petition; notice

The commonwealth, acting through one or more state departments, and any city, town or district, or any combination thereof, to the extent of their ownership of any area described in section one, may be parties, in their proprietary capacity, to proceedings under sections one to fourteen C, inclusive, in respect to any purpose set forth in said section one, to the same extent as individual proprietors. Said bodies politic, or any combination thereof, may also institute proceedings under said sections in their governmental capacity, in any case where it appears that the public health, safety or convenience will be promoted by improvements to effect any of said purposes, but in such proceedings no district shall be organized, and the improvements shall be constructed and maintained as provided in section five A. The petition in such a proceeding need cover only matters pertinent to the project therein set forth, and the provisions of section five requiring that the petitioners constitute a majority ownership of the lands affected shall not apply to such petition. Individuals and corporations qualifying as proprietors may join in any petition authorized in this section. Action by any such body politic hereunder shall be taken by the administrative head of the state department or commission, or by the mayor, selectmen, or prudential committee or other governing body, as the case may be. Notice of the hearing before said board on such a petition shall be given as provided in the first paragraph of section five to all petitioners and to the administrative heads of such state departments and commissions, mayors of such cities, selectmen of such towns, and the prudential committees or other governing bodies of such districts, as the said board may determine, and to all other known proprietors of lands to be affected by such improvements. Cities, towns and districts are hereby authorized to raise and appropriate money for such purposes.

Amended by St.2003, c. 26, § 494, eff. July 1, 2003.

Historical and Statutory Notes

St.1929, c. 288, § 2.

CHAPTER 268A

CONDUCT OF PUBLIC OFFICIALS AND EMPLOYEES

Selected section

Section

21A. Members of municipal commission or board; restrictions on appointments to certain positions.

The section headings for the General Laws in this pamphlet have been editorially supplied.

§ 21A. Members of municipal commission or board; restrictions on appointments to certain positions

Except as hereinafter provided, no member of a municipal commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

The provisions of this section shall not apply to a member of a town commission or board, if such appointment or election has first been approved at an annual town meeting of the town.

Added by St.1967, c. 887, § 2.

SPECIAL ACTS

ACTS OF 1928, CHAPTER 396

AN ACT RELATIVE TO THE INCURRING OF LIABILITIES AND INDEBTEDNESS BY CERTAIN CITIES AND TOWNS.

Section 2. All provisions of special acts effective prior to January first, nineteen hundred and twenty-one which authorize the incurring of liabilities by any board or officer of a city except Boston, or of a town without appropriation, or which authorize any such city or town to incur indebtedness for any purpose not permitted by general law, or which authorize any such city or town to incur indebtedness outside the statutory limit of indebtedness for a purpose for which the incurring of indebtedness is provided by general law to be inside said limit, or which authorize the payment of debt by such a city or town in a manner inconsistent with general law, are hereby repealed. Nothing in this act shall be construed as affecting the validity of any act done prior to the effective date of this act in conformity with any special act, or the legality of any debt incurred, or of any bond or note issued, prior to said effective date, in accordance with any special act, or as affecting the liability of the obligor city or town to discharge any such debt, or its liability to pay the principal and interest on any such bond or note.

Section 3. This act shall take effect on January first, nineteen hundred and twenty-nine.

ACTS OF 1943, CHAPTER 5

AN ACT RELATIVE TO THE ESTABLISHMENT BY COUNTIES, CITIES, TOWNS AND DISTRICTS OF POST-WAR REHABILITATION FUNDS, ETC.

Section 1. During the continuance of the existing state of war between the United States and any foreign country, any city, town or district may appropriate money for the purchase of defense bonds, war bonds or other bonds issued by the federal government, or other bonds which are legal investments for savings banks; provided, that the aggregate amount of such bonds held at any time under authority of this act shall not exceed five per cent of the assessed valuation of real estate and tangible personal property therein in the year nineteen hundred and forty-two. The aggregate amount purchased and invested under authority of this act and all interest earned thereon shall be set up as a separate fund in the custody of the treasurer of such city, town or district, who is hereby authorized, in case any bond held in the fund matures or is called, to reinvest, with the approval of the mayor, selectment, prudential committee or commissioners, as the case may be, in other bonds authorized by this act to be purchased. No bonds held under this act may be sold prior to the termination of the existing state of war.

The proceeds from the sale of any such bond shall be used only for purposes for which the city, town or district may borrow money for a period of not less than ten years in accordance with sections seven and eight of chapter forty-four of the General Laws; provided, that such proceeds may, in each instance with the approval of the board established under section one of chapter forty-nine of the acts of nineteen hundred and thirty-three, be appropriated and used in whole or in part for other purposes.

Said board in giving its approval shall give especial consideration to necessities then existing in such city, town or district involving rehabilitation following the war or due to unemployment conditions or otherwise.

The members of the board aforesaid, when acting under this section, shall receive from the commonwealth compensation to the same extent as provided for services under chapter three hundred and sixty-six of the acts of nineteen hundred and thirty-three, as amended.

Historical and Statutory Notes

Related Laws:

St.1942, c. 4, § 1.

ACTS OF 1945, CHAPTER 74

AN ACT ENABLING COUNTIES, CITIES, TOWNS, AND DISTRICTS TO SECURE THE BENEFITS PROVIDED BY THE FEDERAL GOVERNMENT TO ASSIST THEM IN PUBLIC WORK PROJECTS.

Section 1. For purposes of this act, the term "board" shall mean a board composed of the attorney general, the state treasurer, the state auditor and the director of accounts, or their designees.

The board may employ, subject to the approval of the governor and council, such experts and additional clerical assistance as it may require.

Amended by St.1953, c. 654, § 102; St.2004, c. 149, § 215.

Section 2. Any county, except Suffolk or Nantucket, if authorized by the county commissioners, or any city or town, including Boston and Worcester, if authorized by a two thirds vote as defined in section one of chapter forty-four of the General Laws, with the approval of the mayor in cities or of the selectmen in towns, and any district, with the approval of the prudential committee, commissioners or trustees, as the case may be, may engage in any useful public works project in cooperation with the federal government in any program authorized under any act or joint resolution of congress, but only in case such project is approved, as hereinafter provided, by the board and by the governor, and in case the proper federal authorities have approved a grant or loan, or grant and loan, therefor of federal money under any act or joint resolution of congress. Such projects, so approved, shall be carried out in all respects subject to the provisions of said act or joint resolution and to such terms, conditions, rules and regulations not inconsistent with applicable federal laws and regulations as the board may establish, with the approval of the governor, to ensure the proper execution of such projects. Any such county, city, town or district may accept and use for carrying out any project so approved any grant or loan, or any grant and loan, of federal funds under said act or joint resolution; and, for the purpose only of carrying out such project, may borrow from the United States of America or other sources, or both, such sums as may be fixed by the board as hereinafter provided, and may issue bonds, notes or other forms of written acknowledgment of debt, for such terms and carrying interest at rates not exceeding such rates, as may be fixed by the board, as hereinafter provided. Any such county, city, town or district may accept advances of federal funds for surveys or plan preparation for any useful public works project on such terms as may be prescribed under applicable federal laws and regulations and without being required to obtain the approval of the board and the governor. Such advances may be repaid from any funds including bond proceeds which are available for such project or for such surveys or plan preparation.

Any city, town or district may borrow hereunder, for projects for which borrowings are authorized by section seven of said chapter forty-four of the General Laws and for other projects for which borrowings are not authorized by section eight of said chapter, amounts incurred under authority of this act, not exceeding, in the aggregate outstanding at any one time, one per cent of the equalized valuation, as defined in section one of chapter forty-four of the General Laws, without affecting its future borrowing capacity, and in addition, after such limit of one per cent is reached, may so borrow therefor so much as may be required of any amount within its debt limit as determined in accordance with section ten of said chapter forty-four, not then borrowed or authorized by such city, town or district to be borrowed; and any city, town or district may borrow hereunder, for projects of any class for which borrowings are authorized by section eight of said chapter, water projects being treated as a single class for the purposes hereof, amounts incurred under authority of this act, not exceeding, in the aggregate outstanding at any one time, one per cent of said equalized valuation of such city, town or district without affecting its future borrowing capacity, and in addition, after such limit of one per cent is reached, may so borrow therefor so much as may be required of any amount authorized by said section eight for such class of projects not then borrowed or authorized by such city, town or district to be borrowed, and no borrowing hereunder for any project for which borrowings are authorized by said section eight shall be reckoned in determining the borrowing capacity of such city, town or district under said section ten.

In case a loan shall represent borrowings both within and beyond either of the said special one per cent limits, and such loan shall be later reduced, through the retirement of bonds, notes or other forms of written acknowledgment of debt, or

otherwise, such reduction shall be deemed to have been made wholly in respect of that portion of the loan which represented borrowing beyond the said special one per cent limit so long as any of the said portion remains outstanding. In fixing the periods for which money may be borrowed hereunder for projects for which borrowings are not authorized by said chapter forty-four, the board shall be guided by the above limitations as applied to the provisions of said chapter applicable to like projects.

The board shall fix the maximum terms and maximum rates of interest on the bonds, notes or other forms of written acknowledgment of debt issued hereunder; which terms and rates of interest, in case of obligations to be issued to the United States of America, shall be fixed in accordance with the applicable federal laws and regulations and subject to the approval of the proper federal authorities. All the provisions of said chapter forty-four, exclusive of the limitations contained in the first paragraph of section seven thereof, shall apply to any borrowing hereunder by any city, town, or district, except as hereinbefore provided and, in respect to any borrowing from the United States of America, except in so far as such provisions of law may be in conflict with applicable federal laws and regulations.

Each county, city, town or district seeking the approval of any projects by the board shall submit to it all information required with respect to the financial condition of such county, city, town or district, its outstanding indebtedness within and without its limit of indebtedness, if any, the estimated cost of the project, the alleged necessity therefor, and the proposed method of financing the same.

Amended by St.1960, c. 279, § 1; St.1964, c. 15; St.1965, c. 114, § 1; St.1968, c. 26; St.1978, c. 537, § 2.

Section 3. If a county, city, town or district shall have an agreement with the federal government whereby such government grants such county, city, town or district a sum of money for any purpose, and shall be required primarily to pay that portion of the expense for which reimbursement is to be received from the grant, the treasurer of such county, city, town or district, with the approval of the county commissioners, mayor, selectmen, prudential committee, commissioners, trustees or any board of commission having similar powers, as the case may be, in anticipation of the receipt of the proceeds of such grant, may incur debt, which, in the case of a city, town or district, shall be outside the debt limit, to an amount not exceeding the amount of the grant as shown by the grant agreement, and may issue notes therefor, payable in not exceeding two years from their dates, and may refund the same from time to time; provided, however, that no loan shall be so refunded unless the auditor, in the case of a city, or the accountant or chief accounting officer in the case of a county, town or district which has such an officer, otherwise the treasurer, shall certify in writing filed in the office of the treasurer, where it shall be open to inspection by the public, that at the time such loan is refunded, the county, city, town or district remains entitled to receive reimbursement from the grant in an amount at least equal to the amount of the refunding loan. The proceeds of such reimbursement shall be applied to the discharge of the loan, without the necessity of further appropriation. In the event the county, city, town or district shall no longer be entitled to receive reimbursement from the grant in an amount sufficient to pay all or any portion of a loan issued under this section at the time such loan matures, the loan shall be paid from revenue funds of the county, city, town or district to the extent it can no longer be refunded under this section and any such payment made shall be reported by the auditor or accountant of the city or town or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the determination of the next annual tax rate, unless the city, town or district has otherwise made provision therefor. The amount of a payment made by a county as provided in the third sentence shall be levied by the county commissioners in the next annual county tax, unless other provision has been made therefor.

Amended by St.1963, c. 92, § 1; St.1978, c. 537, § 3.

Section 4. Any officer or department of a county, city, town or district charged with the duty of carrying out any project so approved, shall have, in addition to any powers expressly given by any statute, such powers as may be determined and certified by the board to be proper and reasonably necessary to carry out such project, including the power to take property by eminent domain on behalf of such county, city, town or district; provided, that no source of water supply and no works for sewage disposal shall be installed without first having the approval of the state department of public health. If such officer or department is aggrieved by such action, he or it may, within ten days after notice thereof, appeal to the governor, whose decision shall be final. The board is hereby

authorized to make all necessary orders, rules and regulations and perform all necessary actions under this act; and none of such orders, rules, regulations and actions shall be declared inoperative, illegal or void for any omission of a technical nature in respect thereto. Nothing in this act shall require any action in contravention of applicable federal laws and rules and regulations nor preclude action in conformity therewith.

Section 5. The governor is hereby authorized to take any and all steps necessary from time to time to enable counties, cities, towns and districts of this commonwealth to secure grants or loans, or grants and loans, of federal funds for public works, and the board is hereby directed to cooperate and assist him in every possible way.

Section 6. Repealed by St.1965, c. 114, § 2.

Section 7. Part I of chapter three hundred and sixty-six of the acts of nineteen hundred and thirty-three, and acts in amendment thereof and in addition thereto, are hereby repealed provided, that this repeal shall not affect any action taken thereunder prior to the effective date of this act not affect the validity of any bond, note or other written form of acknowledgment of debt lawfully issued thereunder and outstanding upon such effective date; but to the fullest extent possible conformably to its terms, this act shall be construed as a continuance of the provisions of said Part I and not as a new enactment.

Historical and Statutory Notes

Related Laws:

St.1993, c. 366, § 1.
St.1934, c. 21, § 1.
St.1934, c. 33.
St.1935, c. 404.
St.1936, c. 83.
St.1936, c. 414.
St.1938, c. 50.
St.1939, c. 423.
St.1941, c. 639, § 1.
St.1943, c. 58.

ACTS OF 1948, CHAPTER 548

AN ACT RELATIVE TO THE EXPENDITURE OF FUNDS FOR THE SCHOOL LUNCH PROGRAM.

Section 1. The board of education is hereby designated as the 'State Educational Agency' to represent the commonwealth in dealing with the secretary of agriculture of the United States in carrying out the provisions of the National School Lunch Act as enacted into law on June four, nineteen hundred and forty-six, as amended [42 U.S.C.A. § 1751 et seq.], the Child Nutrition Act of 1966, as amended [42 U.S.C.A. § 1771 et seq.], and such other federal laws as may be enacted relating to nutrition education and food services to children.

Amended by St.1969, c. 650, § 1.

Section 2. Pursuant to any power of school committees to operate or provide for the operation of school food service programs in schools under their jurisdiction, a school committee of any town may establish, maintain, operate and expand a school food service program for the pupils in any school building under the jurisdiction of said committee, may make all contracts necessary to provide material, personnel and equipment needed to carry out the provisions of this act; and if necessary may expend funds to meet the matching requirements and any other provisions of said National School Lunch Act, and such other acts as are provided for in section one of this act.

Amended by St.1949, c. 303; St.1969, c. 650, § 2.

Section 3. School committees may use therefor funds disbursed to them under the provisions of this act, gifts and other funds received from sale of school lunches and other meals under such programs. Such contributions received in the form of money, together with fees from sale of lunches, other meals and any allotments received from the state under the provisions of this act for said purposes, shall be deposited with the treasurer of such town or, in cases where the town is a member of a regional school district, with the treasurer of such district, and held as a separate account and expended by said school committee without appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four of the General Laws. Nothing in this act shall prevent cities or towns from appropriating funds in addition to those provided from other sources.

Added by St.1950, c. 417. Amended by St.1954, c. 256; St.1969, c. 650, § 3.

Section 4. The bureau of nutrition education and school food services, with the approval of the commissioner, shall prescribe regulations for the keeping of accounts and records and the making of reports by or under the supervision of school committees. Such accounts and records shall at all times be available for inspection and audit by authorized officials and shall be preserved for such period of time, not in excess of five years, as the

bureau may lawfully prescribe. The bureau shall conduct or cause to be conducted such audits, inspections and administrative reviews of accounts, records and operations with respect to school food service programs as may be necessary to determine whether its agreements with school committees or other sponsors of school food service programs and other regulations made pursuant to this act are being complied with and to insure that school food service programs are effectively administered.

The bureau may by regulations establish standards and qualifications, which shall be subject to the approval of the board of education, for the positions of school food service supervisors, managers and other food service personnel which are not subject to chapter thirty-one of the General Laws and establish training programs for such personnel.

Added by St.1950, c. 417. Amended by St.1965, c. 610, § 1; St.1969, c. 650, § 4.

ACTS OF 1986, CHAPTER 73

AN ACT PROVIDING RELIEF FROM THE IMPACT OF REVALUATION.

Section 4. Notwithstanding any general or special law to the contrary, in each city or town certified by the commissioner of revenue to be assessing all property at full and fair market value, upon acceptance by the local appropriating authority, as hereinafter defined, a taxpayer who shall otherwise qualify for an exemption under clauses Seventeenth, Seventeenth C, Seventeenth D, Twenty-second, Twenty-second A, Twenty-second B, Twenty-second C, Twenty-second D, Twenty-second E, Thirty-seventh, Thirty-seventh A, Forty-first, Forty-first B, Forty-first C, Forty-second or Forty-third of section five of chapter fifty-nine of the General Laws shall be entitled to an additional exemption which shall be uniform for all exemptions and none of which shall exceed one hundred per cent of said exemption for which he qualifies; provided, however, that in no instance shall the taxable valuation of such property, after all applicable exemptions, be reduced below ten per cent of its full and fair cash valuation except through the application of section eight A of chapter fifty-eight or clause Eighteenth of section five of chapter fifty-nine of the General Laws; and provided, further, that the additional exemption shall not result in any taxpayer paying less than the taxes paid in the preceding fiscal year except through the application of section eight A of chapter fifty-eight or clause Eighteenth of section five of chapter fifty-nine of the General Laws. For the purposes of this section, the term 'local appropriating authority' shall mean the majority vote at a town meaning in a town; the mayor, with the approval of the city council, in a city; and the town council in a municipality having such form of government. The local appropriating authority may elect to apply the provisions of this section in any fiscal year commencing on or after July first, nineteen hundred and eighty-five. The state treasurer shall annually reimburse a city or town which accepts this section only for the amount which otherwise would have been reimbursed under the respective clause had this section not been accepted by said city or town.

Amended by St.1988, c. 126.

ACTS of 1987, CHAPTER 589

AN ACT RELATIVE TO DISPUTE RESOLUTION.

Section 1. St.1973, c. 1078, § 4A, added by St.1977, c. 730, § 1, and amended by St.1979, c. 154, § 1, St.1981, c. 351, § 239, St.1987, c. 589, § 1, St.2002, c. 300, § 14 and St.2010, c. 131, § 106, provides:

Section 4A.(1) (a)(i) There shall be in the executive office of labor, but not subject to the jurisdiction thereof, a committee to be known as the joint labor-management committee, in this section referred to as the committee. The committee shall be composed of 15 members including a chairman and a vice-chairman and such alternate members as the committee shall approve. Twelve committee members shall be appointed by the governor as follows: 3 firefighters from nominations submitted by the Professional Firefighters of Massachusetts, International Association of Firefighters, AFL–CIO, 3 police officers from nominations submitted by the International Brotherhood of Police Officers, NAGE, SEIU, New England PBA, I.U.P.A., AFL–CIO, AFL–CIO, the Boston Patrolmen's Association IUPA, AFL–CIO, the Massachusetts Coalition of Police, IUPA, AFL–CIO; and the Massachusetts Police Association and 6 from nominations submitted by the Advisory Committee on Local Government established under section 62 of chapter 3 of the General Laws. Said twelve members shall be

appointed for a term of three years; provided however that in making his initial appointments, the governor shall appoint one member nominated by said professional firefighters organization for a term of one year, one such member for a term of two years, and one such member for a term of three years; one member nominated by said professional police organization for a term of one year, one such member for a term of two years, and one such member for a term of three years; and two members nominated by said advisory commission for a term of one year; two such members for a term of two years, and two such members for a term of three years. Any member of the committee may be removed by the governor for neglect of duty, malfeasance in office, or upon request by the nominating body.

(ii) The chairman and vice-chairman shall be nominated by the committee, and appointed by the governor for a term of three years. The chairman shall be the chief administrative officer of the committee. The vice-chairman shall assist the chairman and may be authorized by the chairman to act for him in his absence and shall have the full powers of the chairman when so authorized and he shall vote only in the absence of the chairman.

(iii) Alternate members may serve for such term and under such conditions, as the committee shall determine. Said professional police organizations, professional fire organizations, and said advisory commission shall specify alternate members to represent their respective members, subject to the approval of the full committee.

(b) In matters exclusively pertaining to municipal firefighters, committee members nominated for appointment by professional police organizations shall not vote. In matters exclusively pertaining to municipal police officers, committee members nominated for appointment by professional firefighters organizations shall not vote. All committee members shall be eligible to vote on matters of common and general interest. The number of committee members representing the local government advisory commission and the number of committee members representing the professional firefighters or police organizations entitled to vote on any matter coming before the committee shall be equal. The chairman may cast the deciding vote on any matter relating to a dispute concerning negotiations over the terms and provisions of a collective bargaining agreement, including any decision to take jurisdiction over a dispute.

(c) Members and alternate members of the committee shall serve without compensation, but shall be entitled to reimbursement, out of any funds available for the purpose, for reasonable travel or other expenses actually incurred in the performance of their committee duties. The chairman and vice-chairman shall be compensated for time spent for the committee business on a per diem basis at a rate to be determined by the secretary of administration and finance. The committee may purchase such supplies and equipment, and may employ such clerical, staff and other personnel who shall not be subject to the provisions of section nine A of chapter thirty or chapter thirty-one of the General Laws, as they deem necessary to the conduct of committee business out of any funds available for the purpose. Members and alternate members of the committee employed by a municipality shall be granted leave, if on duty, by the municipal employer for those regularly scheduled work hours spent in the performance of committee business.

(2) (a) The committee shall have oversight responsibility for all collective bargaining negotiations involving municipal police officers and firefighters. The committee shall, at its discretion, have jurisdiction in any dispute over the negotiations of the terms of a collective bargaining agreement involving municipal firefighters or police officers; provided, however, that the committee may determine whether the proceedings for the prevention of any prohibited practices filed with the labor relations commission shall or shall not prevent arbitration pursuant to this section.

(b) After notification by the committee, the parties to any municipal police and fire negotiations shall file with the committee, in such time as the committee orders:

(1) copies of all requests to bargain, and of all bargaining agenda;

(2) notification of the apparent exhaustion of the processes of collective bargaining;

(3) notification of all pending unfair labor practice proceedings between the parties;

(4) copies of any factfinding reports;

(5) notification of any impasse extending beyond completion of factfinding procedures;

(6) copies of any collective bargaining agreements, and any relevant personnel ordinances, bylaws, and rules and regulations; and

(7) such other information as the committee may reasonably require.

(c) Notwithstanding the provisions of the first paragraph of section nine of chapter one hundred and fifty E of the General Laws to the contrary, when either party or the parties acting jointly to a municipal police and fire collective bargaining negotiations believe that the process of collective bargaining has been exhausted the party or both parties shall petition first the committee for the exercise of jurisdiction and for the determination of the apparent exhaustion of the process of collective bargaining.

The committee shall forthwith review the petition and shall make a determination within thirty days whether to exercise jurisdiction over the dispute. Subject to the provisions of the second paragraph of clause (d) of this subdivision, if the committee declines to exercise jurisdiction over the dispute or fails to act within thirty days of receipt of the petition on jurisdiction, the petition shall be automatically referred to the board of arbitration and conciliation, hereinafter referred to as the board, for disposition in accordance with the provisions of section nine of chapter one hundred and fifty E of the General Laws.

The petition to the committee shall identify the issues in dispute, the parties, the efforts of the parties to resolve the dispute and such other information as may be prescribed in the rules of the committee.

Said board shall not accept any petition from a party to a municipal police and fire negotiation under section nine of chapter one hundred and fifty E of the General Laws if the petition has not been first reviewed in accordance with the provisions of this section by the committee.

(d) The committee or its representatives or mediators appointed by it may meet with the parties to a dispute, conduct formal or informal conferences, and take other steps including mediation to encourage the parties to agree on the terms of a collective bargaining agreement or the procedures to resolve a dispute. The committee shall make every effort to encourage the parties to engage in good faith negotiations to reach settlement through negotiation or mediation, and may, upon a vote of the committee, initiate factfinding proceedings.

The committee after consultation with the board of arbitration and conciliation may remove at any time from the jurisdiction of the board any dispute in which the board has exercised jurisdiction, and the board shall then take no further action in such dispute. The committee may, at any time, remand to the board any dispute over which the committee has exercised jurisdiction. The board shall assist and cooperate with the committee in its performance of the committee's duties. Disputes over which the committee does not exercise jurisdiction shall be governed by all other applicable provisions of law.

(3) (a) The committee shall have exclusive jurisdiction in matters over which it assumes jurisdiction and shall determine whether issues in negotiations have remained unresolved for an unreasonable period of time resulting in the apparent exhaustion of the processes of collective bargaining. If the committee makes such a determination it is authorized to hold a hearing to identify:

(1) the issues that remain in dispute;

(2) the current positions of the parties;

(3) the views of the parties as to how the continuing dispute should be resolved; and

(4) the preferences of the parties as to the mechanism to be followed in order to reach a final agreement between the parties.

If the committee, after a full hearing, finds there is an apparent exhaustion of the processes of collective bargaining which constitutes a potential threat to public welfare, it shall so notify the parties of its findings.

Within ten days of such notification, the committee shall also notify the parties of its intent to invoke such procedures and mechanisms as it deems appropriate for the resolution of the collective bargaining negotiations. Such procedures and mechanisms may include, but need not be limited to:

(1) any form of arbitration, including, but not limited to, conventional arbitration, issue by issue or last best offer;

(2) arbitration for all or any issue in dispute; provided, however, that the committee may direct the parties to conduct further negotiations concerning issues not specified for arbitration;

(3) single arbitrators, including the chairman, vice-chairman or an outside neutral arbitrator;

(4) an arbitration board, which may include labor and public management representatives as voting or non-voting members;

(5) separate stages or procedures for the executive and legislative bodies of a municipality.

The factors to be given weight in any decision or determination resulting from the mechanism or procedures determined by the committee to be followed by the parties in order to reach final agreement pursuant to this section shall include, but not be limited to:

(1) Such an award which shall be consistent with: (i) section twenty-one C of chapter fifty-nine of the General Laws, and (ii) any appropriation for that fiscal year from the fund established in section two D of chapter twenty-nine of the General Laws.

(2) The financial ability of the municipality to meet costs.

The commissioner of revenue shall assist the committee in determining such financial ability. Such factors which shall be taken into consideration shall include but not be limited to: (i) the city, town, or district's state reimbursements and assessments; (ii) the city, town or district's long and short term bonded indebtedness; (iii) the city, town or district's estimated share in the metropolitan district commission's deficit; (iv) the city, town or district's estimated share in the Massachusetts Bay Transportation Authority's deficit; and (v) consideration of the average per capita property tax burden, average annual income of members of the community, the effect any accord might have on the respective property tax rates on the city or town.

(3) The interests and welfare of the public.

(4) The hazards of employment, physical, educational and mental qualifications, job training and skills involved.

(5) A comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities.

(6) The decisions and recommendations of the factfinder, if any.

(7) The average consumer prices for goods and services, commonly known as the cost of living.

(8) The overall compensation presently received by the employees, including direct wages and fringe benefits.

(9) Changes in any of the foregoing circumstances during the pendency of the dispute.

(10) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between parties, in the public service or in private employment.

(11) The stipulation of the parties.

Any decision or determination resulting from the mechanism or procedures determined by the committee if supported by material and substantive evidence on the whole record shall be, subject to the approval by the legislative body of a funding request as set forth in this section, binding upon the public employer and employee organization, as set forth in chapter one hundred and fifty E of the General Laws, and may be enforced at the instance of either party or the committee in the superior court in equity; provided, however, that the scope of arbitration in police matters shall be limited to wages, hours, and conditions of employment and shall not include the following matters of inherent managerial policy: the right to appoint, promote, assign, and transfer employees; and provided, further, that the scope of arbitration in firefighter matters shall not include the right to appoint and promote employees. Assignments shall not be within the scope of arbitration; provided, however, that the subject matters of initial station assignment upon appointment or promotion shall be within the scope of arbitration. The subject matter of transfer shall not be be within the scope of arbitration, provided however, that the subject matters of relationship of seniority to transfers and disciplinary and punitive transfers shall be within the scope of arbitration. Notwithstanding any other provisions of this act to the contrary, no municipal employer shall be required to negotiate over subjects of minimum manning of shift coverage, with an employee organization representing municipal police officers and firefighters. Nothing in this section shall be construed to include within the scope of arbitration any matters not otherwise subject to collective bargaining under the provisions of chapter one hundred and fifty E of the General Laws. The employer shall submit to the appropriate legislative body within thirty days after the date on which the decision or determination is issued a request for the appropriation necessary to fund such decision or determination, with his recommendation for approval of said request. Notwithstanding the forego-

ing, where the legislative body is a town meeting, such request shall be made to the earlier of (i) the next occurring annual town meeting, or (ii) the next occurring special town meeting. The employer and the exclusive employee representative shall support any such decision or determination in the same way and to the same extent that the employer or the exclusive employee representative, respectively, is required to support any other decision or determination agreed to by an employer and an exclusive employee representative pursuant to the provisions of said chapter one hundred and fifty E of the General Laws. If the municipal legislative body votes not to approve the request for appropriation, the decision or determination shall cease to be binding on the parties and the matter shall be returned to the parties for further bargaining. The committee may take such further action as it deems appropriate, including without limitation, inquiring as to the municipal legislative body's vote.

The commencement of a new municipal finance year prior to the final awards by the arbitration panel shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its award. Any award of the arbitration panel may be retroactive to the expiration date of the last contract.

If a municipal employer, or an employee organization willfully disobeys a lawful order of enforcement pursuant to this section, or willfully encourages or offers resistance to such order, whether by strike or otherwise, the punishment for each day that such contempt continues may be a fine for each day to be determined at the discretion of said court. Such fine shall be in addition to such other remedies as the court may determine.

No member of a unit of municipal police officers or firefighters who is employed on a less than full-time basis shall be subject to the provisions of this clause.

When the parties to a municipal police or fire collective bargaining negotiation jointly design their own dispute resolution procedures, they may divest the committee of jurisdiction by presenting a written agreement of their procedures to the committee; provided, however, that the committee finds that said procedures provide for a final resolution of the dispute, without resort to strike, job action, or lockout; and provided, further that if the committee subsequently finds that either of the parties fails to abide by said procedures, the committee shall assume jurisdiction of the dispute.

(b) In any dispute resolution conducted by other than the committee or its members or staff, the parties shall share and pay equally the costs involved in such resolution; provided, however, that pursuant to a vote of the committee and subject to the availability of funds for the purpose thereof, said costs may be paid by the committee.

(c) The committee shall have jurisdiction in any particular dispute concerning job titles over which the parties have negotiated or to remove specific job titles from collective bargaining for individuals performing certain specific management duties.

(4) The committee shall promulgate rules and regulations necessary for the performance and enforcement of the responsibilities and powers set forth in this act; provided, however, that said committee file a copy of any regulations or amendments thereto with the clerks of the senate and the house of representatives who, with the approval of the president of the senate and speaker of the house of representatives, shall refer such regulations to an appropriate committee of the general court. Within thirty days after such filing, the appropriate committee of the general court shall hold a hearing on such regulations and shall issue a report and file a copy with the joint labor-management committee. Said joint labor-management committee shall consider such report and make revisions in the regulations as it deems appropriate in view of such report and shall forthwith file a copy of the final regulations with the chairman of the committee of the general court to which the regulations were referred.

On or before the first Wednesday of each year in which the provisions of clause (a) of subdivision (3) of this section are in effect, the committee shall file with the clerks of the senate and of the house of representatives, and with the chairmen of the special commission on dispute resolution established under chapter two of the resolves of nineteen hundred and eighty-four, a report assessing the efficacy of the provisions of said clause in decreasing the length and severity of municipal public safety bargaining disputes, and the other impacts, if any, of said provisions on the collective bargaining process. Such report shall include a full listing of any matters in which the provisions of said clause were invoked during the previous twelve months, and the final disposition of any such matters, together with the committee's recommendations, if any, for the modification or extension of said provisions.

The provisions of chapter thirty A of the General Laws, unless otherwise provided, shall apply to the committee.

The committee shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative to or pertinent to the issues presented to the committee.

ACTS OF 1993, CHAPTER 179

AN ACT RELATIVE TO THE ESTABLISHMENT OF REVOLVING FUNDS IN CITIES AND TOWNS.

Notwithstanding the provisions of section fifty-three of chapter forty-four of the General Laws, any city or town may authorize the use of an intergovernmental revolving fund for the purpose of operating a multi-community yard waste processing or recycling program. This fund shall be accounted for separately from all other monies in such city or town and to which shall be credited only the receipts received in connection with the program supported by such revolving fund. Expenditures may be made from such revolving fund without further appropriation, subject to the provisions of this act; provided, however, that expenditures shall not be made or liabilities incurred from any such revolving fund in excess of the balance of the fund nor in excess of the total authorized expenditures from such fund, nor shall any expenditure be made unless approved in accordance with sections forty-one, forty-two, and fifty-six of chapter forty-one.

The intergovernmental revolving fund shall be established only by those communities responsible for receiving revenues from the other cities and towns participating in a multi-community yard waste processing or recycling program. Participating communities shall make payments to the treasurer of the city or town establishing such fund, who shall deposit such monies into the intergovernmental revolving fund. Payments from participating communities shall be from properly authorized appropriations.

Interest earned on the intergovernmental revolving fund balance shall be treated as revenue of the town or city.

A revolving fund established under the provisions of this act shall be by vote of the board of selectmen or city council and mayor. Such authorization shall be made in the initial fiscal year and each fiscal year thereafter by the appropriating authority, and shall include a limit on the total amount which may be expended from such fund in that fiscal year. In any fiscal year the limit on the amount that may be spent from an intergovernmental revolving fund may be increased with the approval of the board of selectmen or city council and mayor. All receipts in connection with the operation of the yard waste processing or recycling program shall be credited to the revolving fund and the department responsible for operating the program, as designated by the city or town authorization, and shall be authorized to expend from such fund for the operation of a yard waste processor in accordance with the accepted procedures of the city or town for the disbursement of funds, including the approval of the mayor and city council or the town manager or board of selectmen. The city or town accountant shall submit annually a report of said account to the mayor and city council or the town manager and board of selectmen for review and a copy of said report shall be forwarded to the bureau of accounts.

At the end of each fiscal year any balance in the revolving fund shall be carried forward to the following fiscal year. The intergovernmental revolving fund may be dissolved after the payment of all expenses incurred by the city or town for the operation and maintenance of such program. Any balance shall be returned to the communities contributing to the fund in a manner equal to the portion of their contribution.

The director of accounts may issue guidelines further regulating intergovernmental revolving funds established under this act.

ACTS OF 1997, CHAPTER 43

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 1998 FOR THE MAINTENANCE OF THE DEPARTMENTS, BOARDS, COMMISSIONS, INSTITUTIONS AND CERTAIN ACTIVITIES OF THE COMMONWEALTH, FOR INTEREST, SINKING FUND AND SERIAL BOND REQUIREMENTS AND FOR CERTAIN PERMANENT IMPROVEMENTS.

Section 218. Notwithstanding the provisions of any general or special law to the contrary, each city or town shall establish a wetlands protection fund for the deposit of all fees paid to the city or town under section 40 of chapter 131 of the General Laws. The fund shall be expended by the conservation commission without further appropriation for the purpose of defraying the costs of administering and enforcing said section 40 of said chapter 131, but only with the written approval of the mayor in cities, or city manager in plan E cities, or the selectmen in towns, or the town manager in towns which have adopted the town manager form of government.

ACTS OF 1998, CHAPTER 194

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 1999 FOR THE MAINTENANCE OF THE DEPARTMENTS, BOARDS, COMMISSIONS, INSTITUTIONS AND CERTAIN ACTIVITIES OF THE COMMONWEALTH, FOR INTEREST, SINKING FUND AND SERIAL BOND REQUIREMENTS AND FOR CERTAIN PERMANENT IMPROVEMENTS.

Section 349. Notwithstanding the provisions of any general or special law to the contrary, each city or town shall establish a wetlands protection fund for the deposit of all fees paid to the city or town under section 40 of chapter 131 of the General Laws. The fund shall be expended by the conservation commission without further appropriation for the purpose of defraying the costs of administering and enforcing said section 40 of said chapter 131, but only with the written approval of the mayor in cities, or city manager in plan E cities, or the selectmen in towns, or the town manager in towns which have adopted the town manager form of government.

ACTS OF 2002, CHAPTER 184

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2003 FOR THE MAINTENANCE OF THE DEPARTMENTS, BOARDS, COMMISSIONS, INSTITUTIONS AND CERTAIN ACTIVITIES OF THE COMMONWEALTH, FOR INTEREST, SINKING FUND AND SERIAL BOND REQUIREMENTS AND FOR CERTAIN PERMANENT IMPROVEMENTS.

Section 197. (a) Notwithstanding the provisions of any general or special law to the contrary, any school committee may vote to authorize the sale of advertising on school buses owned, operated, contracted or controlled by the school district.

(b) The school committee shall establish a governing board that will oversee the sale of advertising on school buses. The governing board shall establish a school bus advertisement fund comprised of revenues from the sale of advertising space on school buses. The monies in a school bus advertisement fund shall be kept separate from the General Fund, not subject to reversion, and may be used by the school committee for any lawful educational purposes.

(c) Advertisements must be age appropriate and not contain promotion of any substance that is illegal for minors such as alcohol, tobacco, drugs and gambling.

(d) Advertising approved by the local school board may appear only, (1) on the sides of the bus, (2) below the seat level rub rail and not above the bottom of the side windows; and (3) at least three inches from any required lettering, lamp, wheel well or reflector behind the service door or stop signal arm.

(e) Advertising approved by the local school board shall not, (1) extend from the body of the bus so as to allow a handhold or present a danger to pedestrians, (2) interfere with the operation of any door or window; or (3) be placed on any emergency doors.

(f) Notwithstanding the provisions of any general or special law to the contrary the Massachusetts Tobacco Control Program, upon approval by the local school committee, may rent advertising space on the sides of publicly owned and operated school buses for the purposes of administrating an anti

smoking campaign within the school districts of the commonwealth.

(g) No more than 25 per cent of the exterior area of said bus shall contain advertising.

PART III

EXTRACTS FROM THE UNITED STATES CODE

TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE

Servicemembers Civil Relief Act

Selected sections

§ 526. Statute of limitations

[Formerly cited as 50 App. USCA § 525]

(a) Tolling of statutes of limitation during military service

The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

(b) Redemption of real property

A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(c) Inapplicability to internal revenue laws

This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

(Oct. 17, 1940, c. 888, § 206, as added Dec. 19, 2003, Pub.L. 108–189, § 1, 117 Stat. 2844.)

§ 561. Taxes respecting personal property, money, credits, and real property

[Formerly cited as 50 App. USCA § 560]

(a) Application

This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember's—

(1) personal property (including motor vehicles); or

(2) real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees—

(A) before the servicemember's entry into military service; and

(B) during the time the tax or assessment remains unpaid.

(b) Sale of property

(1) Limitation on sale of property to enforce tax assessment

Property described in subsection (a) may not be sold to enforce the collection of such tax or assessment except by court order and upon the determination by the court that military service does not materially affect the servicemember's ability to pay the unpaid tax or assessment.

(2) Stay of court proceedings

A court may stay a proceeding to enforce the collection of such tax or assessment, or sale of such property, during a period of military service of the servicemember and for a period not more than 180 days after the termination of, or release of the servicemember from, military service.

(c) Redemption

When property described in subsection (a) is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember's property during the period of military service or within 180 days after termination of or release from military service. This subsection may not be construed to shorten any period provided by the law of a State (including any political subdivision of a State) for redemption.

(d) Interest on tax or assessment

Whenever a servicemember does not pay a tax or assessment on property described in subsection (a) when due, the amount of the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year. An additional penalty or

interest shall not be incurred by reason of nonpayment. A lien for such unpaid tax or assessment may include interest under this subsection.

(e) Joint ownership application

This section applies to all forms of property described in subsection (a) owned individually by a servicemember or jointly by a servicemember and a dependent or dependents.

(Oct. 17, 1940, c. 888, § 501, as added Dec. 19, 2003, Pub.L. 108–189, § 1, 117 Stat. 2854.)

§ 571. Residence for tax purposes

[Formerly cited as 50 App. USCA § 574]

(a) Residence or domicile

(1) In general

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) Spouses

A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.

(b) Military service compensation

Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) Income of a military spouse

Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

(d) Personal property

(1) Relief from personal property taxes

The personal property of a servicemember or the spouse of a service member shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) Exception for property within member's domicile or residence

This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) Exception for property used in trade or business

This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) Relationship to law of State of domicile

Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(e) Increase of tax liability

A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(f) Federal indian reservations

An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(g) Definitions

For purposes of this section:

(1) Personal property

The term "personal property" means intangible and tangible property (including motor vehicles).

(2) Taxation

The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles

and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) Tax jurisdiction

The term "tax jurisdiction" means a State or a political subdivision of a State.

(Oct. 17, 1940, c. 888, § 511, as added Dec. 19, 2003, Pub.L. 108–189, § 1, 117 Stat. 2858, and amended Nov. 11, 2009, Pub.L. 111–97, § 3(a), 123 Stat. 3008.)

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